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Lee J. Rosen

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PROPOSITION 16 AND THE NCAA INITIAL-ELIGIBILITY STANDARDS: PUTTING THE STUDENT BACK IN STUDENT-ATHLETE

Lee J. Rosen⁺

Only one in every 10,000 young athletes will end up playing professional football or basketball.¹ This means that out of the youths currently involved in every level of basketball and football athletic programs, less than 18,000 will play on a Division I level, and less than 200 will advance to compete professionally.² Nevertheless, big-time college athletic programs, primarily basketball and football, are a “training ground” where the student-athlete is heavily recruited to play sports and earn massive revenue for his school.³

Missing from the description of student-athletes is any mention of studying, higher learning, or graduation, thus teaching the student-athlete that he is only on campus to further enhance his athletic skill.⁴ Far too often student-athletes receive compensation against National Collegiate Athletic Association’s (NCAA) rules, including gift promises,

⁺ J.D. Candidate, May 2001, The Catholic University of America, Columbus School of Law.

1. See Raymie E. McKerrow & Norinne Hilchey Daly, *Sports and Academic Studies Are Compatible*, in *SPORTS IN AMERICA: OPPOSING VIEWPOINTS* 65 (William Dudley ed., 1994).

2. See *id.* Even the cream of the high school crop is not always successful. See Stephen A. Smith, *The Young and the Restless*, *THE HOUS. CHRON.*, May 5, 1996, at 1. Between 1977 and 1991 there were 354 McDonald’s All-Americans—considered a high school player’s crowning achievement—but only 116 (less than one-third) had National Basketball Association (NBA) careers lasting three or more seasons. See *id.*

3. NAND HART-NIBBRIG & CLEMENT COTTINGHAM, *THE POLITICAL ECONOMY OF COLLEGE SPORTS* 3 (1986) (discussing the corporate organization of college sports); see also MURRAY SPERBER, *COLLEGE SPORTS INC.: THE ATHLETIC DEPARTMENT VS. THE UNIVERSITY* 1-2 (1990) (clarifying the idea that colleges recruit elite student-athletes based on their potential as commercial entertainers); TED WEISSBERG, *BREAKING THE RULES: THE NCAA AND RECRUITMENT IN AMERICA’S HIGH SCHOOLS* 22 (1995).

4. See SPERBER, *supra* note 3, at 1-2. On today’s college campus, colleges increasingly separate student-athletes from their general student population. See HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 3 (“[I]ndeed, the adoption of the ‘student-athlete’ designation disguises this separation.”). Recent studies generally support the idea that student-athletes perform as well academically as non-athletes. See *id.* In many cases, however, student-athletes “are not in college to attain passing grades, though many eventually do graduate.” *Id.*

cars, cash payments, and "no-show jobs."⁵ Given the staggeringly small percentage of athletes who make the professional ranks, far too many student-athletes leave college unprepared to pursue careers outside of the athletic world.⁶ This information reinforces the argument that amateurism in college athletics no longer exists and that the corporate mentality threatens the future of college athletics.⁷

Like the student-athlete,⁸ college coaches face tremendous pressure to win, especially because of the big business mentality that consumes college sports.⁹ This win-at-all-costs attitude places coaches and athletes in a difficult situation.¹⁰ Coaches must win, but doing so may compromise

5. HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 3. The athletic booster or alumni clubs that generate revenue for athletic programs persistently violate NCAA recruitment policies. *See id.* at 89. Underground violations, such as providing coaches and athletes with cars, women, money, summer jobs, and credit cards, are very difficult to prevent. *See id.* at 13, 89-90. At Clemson University, "[t]he mentality . . . is that ethics aren't as important as winning. The football team went 21-1 over the past two years and cheated like crazy; the basketball team has been 20-34 and is completely clean. Yet the boosters brag about the football program." *Id.* at 90.

6. *See id.* at 88, 89. Although student-athletes may graduate with a degree, they do not necessarily receive a quality education. *See SPERBER, supra* note 3, at 301. The president of an Illinois graphic-arts company "wanted to help some recently graduated wrestlers" by offering them jobs. *Id.* He realized, however, that the athletes "had unrealistic expectations about jobs they might hold . . . one guy wanted to be sales manager of my company. He had no experience or skills whatsoever. What he really wanted wasn't a job. He just wanted to be on the payroll . . ." *Id.*

7. *See, e.g.,* HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 3 ("Many private colleges and universities . . . are relatively strong bastions of amateurism. Yet even they are infected with the virus of corporate athleticism.").

8. The average student body population at all Division I schools between 1983 and 1989 was 529,242 students and the average student-athlete population at all such schools was 13,550 students—a mere 2.56% of the student population. *Cf. Cureton v. NCAA*, 37 F. Supp. 2d 687, 708 (E.D. Pa. 1999), *rev'd*, 198 F. 3d 107 (3rd Cir. 1999), *on remand to* 2000 U.S. Dist. LEXIS 4790 (E.D. Pa. Apr. 13, 2000), *reconsideration denied by* 2000 U.S. LEXIS 6526 (E.D. May 12, Pa. 2000).

9. *See* HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 2-3; *see also generally* ALLEN L. SACK & ELLEN J. STAUROWSKY, COLLEGE ATHLETES FOR HIRE: THE EVOLUTION AND LEGACY OF THE NCAA'S AMATEUR MYTH 95 (1998) (asserting that the commercialization of college athletics causes education to fall further into the background). Despite the prevailing myth that colleges and universities factor college sports into their educational plans, the reality is that the primary purpose of college athletics is "commercial entertainment." SPERBER, *supra* note 3, at 1. In many "big-time" programs, the athletic department operates as a separate entity from the college and its educational departments. *Id.*

10. *See* SACK & STAUROWSKY, *supra* note 9, at 95. Some commentators trace the development of this business system and must-win philosophy back to the turn of the twentieth century. *See* HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 17.

their institution's academic standards.¹¹ The athlete, on the other hand, may possess unparalleled athletic talent and may receive an athletic scholarship regardless of educational ability or the desire to excel.¹² In an effort to balance these factors, the NCAA enacted minimum eligibility standards through its bylaws, the most recent being Proposition 16.¹³

During the Civil Rights Movement fierce opposition to these eligibility standards grew, mainly because they allegedly had an unfair impact on African-Americans, other minorities, and certain socio-economic groups.¹⁴ Since the inception of minimum academic requirements for in-

11. See SACK & STAUROWSKY, *supra* note 9, at 95, 100-01. A case study analyzing the University of Tulsa determined that for many athletes, college sports transformed from recreation into jobs. See *id.* at 101. One student lamented that coaches who focused on money and winning passed those pressures onto the student-athletes. See *id.* The study also revealed that many athletes entered school with optimistic feelings about their academic prospects. See *id.* at 100-01. That vision was shattered at the end of their first year when they realized the inherent difficulty of balancing sports and studying. See *id.* at 100-01. The study discovered that these students succumb to "role engulfment," a phenomenon where the athlete role "dominate[s] all facets of their existence." *Id.* at 101.

12. See *id.* at 95. Many athletes feel a tremendous amount of pressure to be an athlete first and then a student. See *id.* at 100. A 1983-1985 study sponsored by the Center for Athletes' Rights and Education (CARE) looked at the relationship between athletics and education. See *id.* The study specifically chose 644 male and female basketball players who represented colleges and universities in 35 conferences in all three NCAA divisions. See *id.* Forty-one percent of Division I athletes, 23% of Division II athletes, and 12% of Division III athletes answered affirmatively when asked whether they felt pressure to be an athlete first and a student second. See *id.* Another question asked whether coaches' demands hindered their ability to be top students. See *id.* Again, Division I athletes responded "yes" more frequently than the other divisions, but men were more likely than women to feel this pressure regardless of division. See *id.* A more disturbing finding indicated that many Division I athletes felt compelled to take simpler majors, miss classes, take easier semester course loads, miss exams, and take "other academic shortcuts." *Id.* Although this particular study is criticized due to a "scientifically inadequate sampling design," it accurately conveys some of the major issues surrounding college athletes. *Id.* at 101.

13. See Laura Pentimone, *The National Collegiate Athletic Association's Quest to Educate the Student-Athlete: Are the Academic Eligibility Requirements an Attempt To Foster Academic Integrity or Merely to Promote Racism?*, 14 N.Y.L. SCH. J. HUM. RTS. 471, 473 (1998) (discussing the development of academic eligibility requirements which culminated in the implementation of Proposition 16).

14. See SACK & STAUROWSKY, *supra* note 9, at 96-97 (attributing criticism of the NCAA's eligibility rule to its alleged intent to discriminate against minority athletes). Of those African-American students who registered with the NCAA Clearinghouse at Division I universities, 26.6% failed to meet Proposition 16's standards in 1996 and 21.4% did not qualify in 1997. See Memorandum from NCAA Division I Academics/ Eligibility/ Compliance Cabinet Subcommittee on Initial-Eligibility Issues to Chief Executive Officers, Faculty Athletics Representatives, Directors of Athletics, Senior Woman Administrators, and Compliance Officers of NCAA Division I Institutions 756a (July 27, 1998) [hereinafter Memorandum] (on file with *Catholic University Law Review*). However, only

coming student-athletes, the NCAA has dealt with horror stories of college athletes who graduated without even knowing how to read.¹⁵ Yet, one of the NCAA's main goals is to maintain a clear delineation between intercollegiate athletics and professional sports while keeping athletics an essential component of the educational experience.¹⁶ The NCAA believes that uniform rules are essential "to accomplish its goals of scholarship, sportsmanship, and amateurism" because such goals place all colleges and universities on equal footing.¹⁷ Despite routine criticism characterizing the NCAA as a "weak institution,"¹⁸ it wields a great power in the world of collegiate athletics—perhaps too much.¹⁹

This Comment addresses the effects of Proposition 16 on college athletics, beginning with the history of NCAA action, the previous rules promulgated by the NCAA, and the current Proposition 16 court battle. Next, this Comment analyzes the arguments surrounding Proposition 16

6.4% of white student athletes in 1996 and 4.2% in 1997 failed to meet the eligibility standards. *See id.*

A 1992 study conducted by the National Center for Education Statistics found that 67.4% of white college-bound students would have met Proposition 16's initial eligibility requirements, while only 46.4% of black college-bound students would have satisfied those standards. *See* Jason M. Stallman, *This Prop Isn't Sweet 16 for Some College Recruits: Rule Sparks Renewed Debate on Fairness*, ST. LOUIS POST-DISPATCH, Aug. 15, 1996, at 1D. The NCAA conducted an Academic Performance Study (APS) showing that Proposition 16 disqualifies 72% of prospective African-American student-athletes, compared to 17% of potential white student-athletes. *See* Brief for Appellees/Cross-Appellants at 28, *Cureton v. NCAA*, 37 F. Supp. 2d 687, 708 (E.D. Pa. 1999) (Nos. 99-1222, 99-1298) [hereinafter Brief for Appellees]. The NCAA standards have also significantly affected low-income families. *See* Memorandum, *supra*, at 756a. Specifically, the NCAA determined that 18% of all student-athletes with a family income below \$30,000 failed to satisfy Proposition 16's standards, "whereas only 2.5[%] of student-athletes with a family income of greater than \$80,000 failed to qualify." *Id.* The aforementioned National Center for Education Statistics study also found that student-athletes from higher socio-economic groups would have been eligible at a far higher rate (94%) than those students from lower groups (63%). *See* Stallman, *supra*, at 1D.

15. *See, e.g.*, SPERBER, *supra* note 3, at 278 (describing how All-NFL player and former Oklahoma State star Dexter Manley admitted before a congressional hearing that despite graduating from college, he was illiterate).

16. *See* Pentimone, *supra* note 13, at 478 & n.55, 479 & n.56 (citing to article 1.13 of the NCAA Manual and to section 2.4 of the NCAA Constitution).

17. *NCAA v. Miller*, 795 F. Supp. 1476, 1484 (D. Nev. 1992) (stating that the achievement of these goals relies upon a national and uniform enforcement of the NCAA's rules).

18. *E.g.*, HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 14.

19. *See, e.g.*, Brian L. Porto, *Legal and Constitutional Challenges to the NCAA: The Limits of Adjudication in Intercollegiate Athletics*, in GOVERNMENT AND SPORT: THE PUBLIC POLICY ISSUES 117, 121 (Arthur T. Johnson & James H. Frey eds., 1985) ("[T]he federal courts have indicated their belief that the scope of NCAA authority has expanded greatly since the organization's early days as a purely legislative agency.").

in light of the NCAA's role in promulgating standards. This Comment analyzes the loss of amateurism in college athletics and examines opportunities for reform. Finally, this Comment poses alternatives to the use of *any* eligibility requirements while suggesting potential solutions to the NCAA's current state of affairs.

I. PROPOSITION 16: THE NCAA'S ATTEMPT TO SALVAGE A REPUTATION AMIDST GROWING EMBARRASMENTS

Following numerous eligibility scandals and debacles, the NCAA enacted minimum academic standards for incoming college athletes.²⁰ Regulation began with "home rule," which evolved into the "1.600 Rule," until the NCAA enacted Proposition 48, which Proposition 16 later replaced.²¹ Proposition 48 and Proposition 16, nearly identical in scope, use different initial eligibility standards.²² Proposition 16, the current standard, is a necessary evil for any athlete considering participation in intercollegiate sports.

A. *The Beginnings of NCAA Mandated Regulation: Answering Previously Unanswered Questions*

Enacted by the NCAA in 1996, Proposition 16 is a relatively recent addition to the NCAA's bylaws.²³ Prior to 1965, schools freely enacted their own admission policies for college athletes and set their own eligibility standards under the "home rule" policy.²⁴ This "home rule" policy fell out of favor and in 1965 the NCAA adopted the "1.600 rule,"²⁵ which "required that NCAA-affiliated schools grant athletic scholarships, first year eligibility for participation in athletics, and other benefits only to applicants who could 'predict' . . . a minimum 1.600 grade point average

20. See discussion *infra* Part I.

21. See *infra* notes 23-30 and accompanying text.

22. See *infra* notes 33-51 and accompanying text.

23. See Kenneth L. Shropshire, *Colorblind Propositions: Race, the SAT, & the NCAA*, 8 STAN. L. & POL'Y REV. 141, 144 (1997) [hereinafter Shropshire, *Colorblind Propositions*]. The NCAA formed in the early part of the twentieth century in response to the severe violence associated with college football. See PAUL R. LAWRENCE, UNSPORTSMANLIKE CONDUCT: THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION AND THE BUSINESS OF COLLEGE FOOTBALL 10-13 (1987). The NCAA's original name is the Intercollegiate Athletic Association of the United States (IAAUS), which was formally changed in 1910 to the NCAA. See *id.* at 13.

24. KENNETH L. SHROPSHIRE, IN BLACK AND WHITE: RACE AND SPORTS IN AMERICA 107 (1996) [hereinafter SHROPSHIRE, IN BLACK AND WHITE].

25. *Id.*; see also SACK & STAUROWSKY, *supra* note 9, at 96 (indicating that this rule became applicable in 1966).

during their first year in college.”²⁶ This prediction of a high school student’s future college grade point average (GPA) was based on the student’s past high school GPA or class rank, and his score on either the Scholastic Aptitude (later “Assessment”) Test (SAT) or the American College Test (ACT).²⁷ In 1973, the NCAA repealed the “1.600 rule” and replaced it with the “2.000 rule.”²⁸ The new rule only required student-athletes to attain an overall 2.0 high school GPA to be eligible for athletic competition.²⁹

NCAA eligibility determinations that were based solely on high school GPAs generated some concern.³⁰ For example, “[w]as an A in rural Oklahoma the same as an A in a New York public high school [or] [h]ad the star athlete in Tucson been given a passing grade by a basketball-fan faculty member?”³¹ Consequently, the NCAA eventually used the SAT and the ACT as a uniform method to measure students’ academic capabilities.³²

In 1986 the NCAA enacted Proposition 48, which set new minimum academic requirements for incoming student-athletes.³³ By the 1988-1989

26. *Parish v. NCAA*, 506 F.2d 1028, 1030 (5th Cir. 1975) (stating that the NCAA implemented the 1.600 rule to maintain the athlete as “an integral part of the student body” while simultaneously preserving the meaningful role of intercollegiate sports in collegiate educational programs). The NCAA also adopted this rule to help maintain its academic integrity. See Pentimone, *supra* note 13, at 479 & n.61.

27. See *Parish*, 506 F.2d at 1030.

28. *Id.* at 1030 n.1; see also FRANCIS X. DEALY JR., WIN AT ANY COST: THE SELL OUT OF COLLEGE ATHLETICS 112-13 (1990).

29. See *Parish*, 506 F.2d at 1030 n.1; see also DEALY, *supra* note 28, at 113 (explaining that between 1971 and 1986 a high-school senior with a 2.0 GPA in general wood-working classes could receive an athletic scholarship). Coaches could not find fault with the 2.0 rule. See *id.* at 113-14. A coach could brag about recruiting almost any athlete without violating any rule, providing the student had a 2.0 GPA. See *id.* Once enrolled at the university, these students devoted nearly all of their time to athletic endeavors, including practicing and competing “at least four and half hours a day, seven days a week.” *Id.* at 114.

30. See SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 107.

31. *Id.*

32. See *id.*

33. See Pentimone, *supra* note 13, at 481. Known officially as NCAA Bylaw 14.3, the initial standards required a student-athlete to attain a minimum GPA in 11 core classes (including math, English, natural sciences, and social sciences) and a minimum SAT score of 700 or a minimum ACT score of 15. See SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 108; see also Christopher W. Lewis, *Athletic Eligibility: Too High a Hurdle for the Learning Disabled*, 15 COOLEY L. REV. 75, 77 (1998) (explaining that the NCAA must approve the list of the “core courses”). The list of acceptable classes specifically excludes special education and remedial courses. See *id.* This clearly leaves learning-disabled students disadvantaged because they may be required to participate in special classes not

academic year, the NCAA completely phased in Proposition 48's requirements³⁴ and required a high school student-athlete to obtain a minimum of 700 on his SAT, (or 17 out of a possible 36 on the ACT) and to maintain a "C" average or a 2.0 GPA in eleven core-curriculum classes.³⁵ The NCAA considered student-athletes who met these standards eligible, upon enrollment in college, to compete, practice, and receive "athletically related financial aid."³⁶ Otherwise, the NCAA prohibited them "from such opportunities during their first year."³⁷ The final impetus behind the decision to implement Proposition 48 stems from a rash of stand-out student-athletes, including basketball players John "Hot Rod" Williams and Chris Washburn, who gained admission into educational institutions despite exceedingly low SAT scores.³⁸ The media criticized Proposition 48 and placed the NCAA under fire for "recruit[ing] educationally ill-prepared, but physically talented, minority athletes, us[ing] them until they exhausted their athletic eligibility, then discard[ing] them . . . still without the ability to read at a fifth-grade

among the eleven NCAA "core courses," which may prevent them from satisfying the NCAA's requirements. *Id.* at 77-78.

34. See *Cureton v. NCAA*, 37 F. Supp. 2d 687, 690 (E.D. Pa. 1999), *rev'd*, 198 F. 3d 107 (3rd Cir. 1999), *on remand to* 2000 U.S. Dist LEXIS 4790 (E.D. Pa. Apr. 13, 2000), *reconsideration denied by* 2000 U.S. LEXIS 6526 (E.D. Pa. May 12, 2000).

35. See Pentimone, *supra* note 13, at 481-82. A student receives 400 points on the SAT for merely signing his name and answering one question. See SPERBER, *supra* note 3, at 218 (putting the NCAA's minimum requirement into perspective). A student then only needs 300 more points to become eligible under Proposition 48. See SACK AND STAUROWSKY, *supra* note 9, at 98 (citing U.S. College Board statistics that indicate that 80-85% of the individuals who sat for the SAT in 1982 would have met the Proposition 48 requirement). To meet this requirement, an individual only needs to answer correctly 13 out of 60 math questions and 24 out of 85 verbal questions—a 25% average. See SPERBER, *supra* note 3, at 218 ("Similar statistics apply to the ACT exam."). To pass most college exams and high school tests, "a student must answer *at least 50[%]* of the questions correctly." *Id.*

36. *Cureton*, 37 F. Supp. 2d at 690.

37. *Id.*

38. See SPERBER, *supra* note 3, at 218-20. Tulane University admitted Williams with an SAT score of 470, while the median score for incoming freshman was 1121. See *id.* at 218-19. North Carolina State University admitted Washburn with an SAT score of 470, while the median score for incoming freshman was 1030. See *id.* at 219. The Washburn scenario is far from unique. In the mid-1980s 40% of the athletes at North Carolina State had SAT scores below 700. See *id.* at 220. Members of the state faculty investigated North Carolina State's admission practices and found that coach Jim Valvano and his assistant coaches enjoyed carte blanche authority to admit whoever they wanted. See PETER GOLENBOCK, *PERSONAL FOULS* 42 (1989). The investigation revealed that its coaches acted as admissions officers by "virtually admitting some athletes even *before* they took their SATs," and publicly announcing that a player had signed a letter of intent to attend the college on scholarship. *Id.*

level.”³⁹

Proposition 48 also developed the concept of “partial qualifiers,” which allowed high school student-athletes to receive athletic scholarships if they partially met the academic requirements.⁴⁰ This system forbade the student-athlete from competing as a freshman, but allowed him to compete during his second year if he maintained “good academic standing” and “an overall grade point average of 2.0 in twenty-four units of college work.”⁴¹

In 1992, the NCAA modified the initial eligibility rules and adopted Proposition 16, which took effect in 1996.⁴² Proposition 16 used an “initial-eligibility index” that shifted some of the focus away from the SAT and ACT amidst concerns of their inherent racial biases.⁴³ The “initial-

39. Pentimone, *supra* note 13, at 480 (quoting Symposium, *College Athletics as a Vehicle For Social Reform*, 22 J.C. & U.L. 77, 83 (1995)). Former Washington Redskin Dexter Manley fits within this category of ill-prepared students as he graduated from Oklahoma State University unable to read. See *id.* at 480 n.66 (citing Tom Callahan, *Pro Football's Everyman*, U.S. NEWS & WORLD REP., Dec 17, 1990, at 78).

40. SPERBER, *supra* note 3, at 221; see also Pentimone, *supra* note 13, at 483. Proposition 48 defines “partial qualifier,” as a student who achieved the required GPA, but not the necessary SAT score, or vice versa. *Id.* A successful partial qualifier proved that he deserved to be admitted to the university because of his ability to handle the rigors associated with collegiate academics despite low test scores or GPA. See SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 118. A partial qualifier could receive both athletic and nonathletic financial aid and was allowed to practice, but not play, with the team during his freshman year. See *id.* “Nonqualifiers,” eligible only for nonathletic financial aid, received such aid based on need and school guidelines. *Id.*

41. Pentimone, *supra* note 13, at 483-84. If, however, the student-athlete could not achieve the requisite GPA, that student-athlete became a “nonqualifier” by NCAA standards and lost his eligibility to play or to receive a scholarship. *Id.* A 1987 survey of Division I schools identified 599 partial qualifiers and 85 nonqualifiers on college campuses. See SPERBER, *supra* note 3, at 222. The Atlantic Coast Conference (ACC) amended their original policy, which prohibited conference members from accepting any partial qualifiers and currently maintains a “selective initial eligibility policy.” Larry Keec, *ACC Adopts New Standards for Some Athletes*, NEWS & REC., July 1, 1995, at C3. The ACC now permits each school a quota of four partial qualifiers, but it is limited to two men and two women and only one athlete per sport. See *id.*

42. See *Cureton v. NCAA*, 37 F. Supp. 2d 687, 690 (E.D. Pa. 1999), *rev'd*, 198 F.3d 107 (3rd Cir. 1999), *on remand to* 2000 U.S. Dist. LEXIS 4790 (E.D. Pa. Apr. 13, 2000), *reconsideration denied by* 2000 U.S. LEXIS 6526 (E.D. Pa. May 12, 2000); Shropshire, *Colorblind Propositions*, *supra* note 23, at 144; see also Pentimone, *supra* note 13, at 486. Proposition 16 is codified as NCAA Bylaw 14.3. See NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 1996-97 NCAA MANUAL 166 (Laurie Bollig ed. 1996) [hereinafter NCAA MANUAL].

43. NCAA MANUAL, *supra* note 42, art. 14.3.1.1.1; see Pentimone, *supra* note 13, at 487. It is argued that the SAT's inherent bias centers on “differential item functioning” (DIF). DEALY, *supra* note 28, at 116. The support for this argument states that “standardized tests [such as the SAT] are culturally biased against poor students, both black

eligibility index” allowed student-athletes to establish eligibility with a 2.0 GPA in thirteen core courses, provided they also obtained SAT scores of 1010 (or combined ACT score of 86).⁴⁴ The other end of the scale allowed a student-athlete to receive an SAT score of 820 (or 68 ACT), provided he maintained a GPA of at least 2.5.⁴⁵ The new standards also changed the meaning of “partial qualifier” to include student-athletes whose total SAT scores fell between 720 and 810 with corresponding GPAs.⁴⁶

B. Enter the Lawsuits: The NCAA’s Role as a State Actor

Individuals may sue the NCAA under Title VI of the Civil Rights Act

and white, because a number of their verbal questions relate most directly to upper-middle-class white life.” John R. Allison, *Rule-Making Accuracy in the NCAA and its Member Institutions: Do Their Decisional Structures and Processes Promote Educational Primacy for the Student-Athlete?*, 44 U. KAN. L. REV. 1, 54 (1995). According to the DIF theory, unique cultural backgrounds cause different groups of people to define the same or similar words differently, and dissimilar economic or social backgrounds may cause unfamiliarity with certain words or phrases. See Pentimone, *supra* note 13, at 474. As a result, DIF experts say that the SAT more accurately measures “developed ability” instead of intelligence. *Id.* An example of this cultural bias includes the following SAT question: “Runner is to marathon as: (a) envoy: embassy (b) martyr: massacre (c) oarsman: regatta (d) referee: tournament (e) horse: stable. The correct answer is (c);]” but only 22% of African-American test takers answer this question correctly, whereas 52% of white test takers choose the correct answer. DEALY, *supra* note 28, at 116-17. Chuck Stone, the columnist who provided this illustration, explained that “[s]uburban kids are just more familiar with regattas than ghetto kids.” *Id.*

44. NCAA MANUAL, *supra* note 42, arts. 14.3.1.1(b), 14.3.1.1.1, 14.3.1.2. To meet the core-course requirement:

A “core course” is defined as a recognized academic course (as opposed to a vocational or personal-services course) that offers fundamental instructional components in a specific area of study. Courses that are taught at a level below the high school’s regular academic instructional level (e.g., remedial, special education, or compensatory) shall not be considered core courses regardless of course content.

Id. art. 14.3.1.3. The new core curriculum required classes in the following academic areas: four years of English, two years of mathematics, including one year of algebra and geometry (“or one year of a higher-level mathematics course for which geometry is a prerequisite”); two years of natural or physical science (including at least one laboratory course if offered by the high school); one year of additional courses in any of the aforementioned subjects; two years of social science; and two years of additional credit in any of the above courses or foreign language, computer science, philosophy or nondoctrinal religion. *Id.*

45. See *id.* art. 14.3.1.1(b).

46. *Id.* art. 14.3.2.1.1. For example, an individual with an SAT score of 780 and a core-curriculum GPA of 2.6 at the time of graduation from high school could be a “potential qualifier.” *Id.* A “partial qualifier,” unlike a “qualifier,” cannot compete in intercollegiate sports during his first academic year; however, he may practice on campus and receive financial aid. *Id.* arts. 14.3.2.1.1-14.3.2.1.1.1; see also *Cureton*, 37 F. Supp. 2d at 691 (discussing “partial qualifiers” under Proposition 16).

of 1964 (Title VI).⁴⁷ Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁴⁸ In order to sustain a disparate impact⁴⁹ case under Title VI, a plaintiff must prove that the NCAA is a state actor, and that the state action violated the plaintiff’s due process constitutional rights.⁵⁰ Due process claims against the NCAA have been brought under the Fourteenth Amendment because courts have found that the NCAA’s action constitutes “state action.”⁵¹ Because nonqualifiers have sued the NCAA under Title VI, the NCAA’s prior role as a state actor becomes important in understanding the manner in which courts attack Proposition 16.⁵²

47. See generally, e.g., *Cureton v. NCAA*, 37 F. Supp. 2d 687 (E.D. Pa. 1999), *rev’d*, 198 F. 3d 107 (3rd Cir. 1999), *on remand to* 2000 U.S. Dist LEXIS 4790 (E.D. Pa. Apr. 13, 2000), *reconsideration denied by* 2000 U.S. LEXIS 6526 (E.D. Pa. May 12, 2000).

48. Civil Rights Act of 1964 § 601, 42 U.S.C. § 2000d (1994); see also 110 CONG. REC. 7062 (daily ed. Apr. 7, 1964) (statement of Sen. Pastore). In discussing Title VI, Senator Pastore stated:

Title VI enables the Congress to consider the overall issue of racial discrimination separately from the issue of desirability of any particular Federal assistance program.

....
... [T]he purpose of [T]itle VI is to make sure that funds of the United States are not used to support racial discrimination. In many instances, the practices of segregation and discrimination, which [T]itle VI seeks to end, are unconstitutional.

Id.

49. See *infra* note 101 (explaining the elements of a disparate impact case).

50. See Pentimone, *supra* note 13, at 501. The statute reads:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . .

42 U.S.C. § 1983.

51. Porto, *supra* note 19, at 121 (“[T]he NCAA performs legislative, administrative, and adjudicative functions that are governmental in nature and that would have to be performed by a government agency if the NCAA did not exist.”). “The NCAA is a voluntary, unincorporated association of approximately 1,200 members, [including] colleges and universities, conferences and associations, and other educational institutions.” *Cureton*, 37 F. Supp. 2d at 690. The active members are divided into several divisions, but only Divisions I and II are subject to Proposition 16 standards. See *id.*; NCAA MANUAL, *supra* note 42, art. 14.3 (setting out the academic requirements for Division I and II schools); see also *The Official NCAA Website* (visited June 16, 2000) <<http://www.ncaa.org/about/membership.html>> discussing NCAA membership).

52. See, e.g., *Cureton*, 37 F. Supp. 2d. at 692-96.

1. *Attacking the Arbitrary Beginnings of Eligibility Requirements*

Five Centenary College basketball players brought one of the earliest constitutional challenges to the NCAA's "1.600 rule."⁵³ The NCAA sanctioned Centenary for violating the "1.600 rule;" however, the college insisted that it complied with the NCAA's rules when it recruited the athletes, despite substantial evidence indicating the department's knowledge of the players' inability to satisfy the "1.600 rule."⁵⁴ Centenary refused to declare the students ineligible and allowed them to continue playing.⁵⁵ As the likelihood of Centenary receiving an invitation to an NCAA postseason tournament increased, the five players brought a lawsuit against the NCAA that claimed that the NCAA denied them due process and equal protection of the laws.⁵⁶

The *Parish* court first determined that the NCAA acted "under color of state law," which subjected the NCAA to federal jurisdiction under 42 U.S.C. § 1983.⁵⁷ Although the court failed to identify clearly the NCAA as a state actor, it determined that the NCAA met § 1983's jurisdictional requirements.⁵⁸ The five student-athletes conceded that the NCAA violated no fundamental right, but claimed that the "1.600 rule" discriminated against a "vaguely defined class" or classes that they could only obscurely identify.⁵⁹ Because the court declined to extend strict scrutiny to "a large, diverse, and amorphous class" whose members' only similar-

53. *Parish v. NCAA*, 506 F.2d 1028, 1030, 1031 (5th Cir. 1975) (challenging the constitutionality of the rule on due process and equal protection grounds); *see also supra* notes 26-30 and accompanying text (discussing the rule and its requirements).

54. *Parish*, 506 F.2d at 1030-31. The sanctions prevented Centenary from playing in any NCAA sponsored tournaments or in any NCAA sanctioned televised game unless it declared the five students ineligible. *See id.* The college and the players requested a temporary restraining order, however, which the court granted to allow the athletes to continue playing. *See id.* at 1031.

55. *See id.*

56. *See id.*

57. *Id.* at 1031, 1033. High school associations have also been held to act under color of state law. *See, e.g., Louisiana High School Athletic Ass'n v. St. Augustine High School*, 396 F.2d 224, 227-28 (5th Cir. 1968) (showing that the conduct of the Louisiana High School Athletic Association constituted state action and holding that the association violated the Constitution through racial discrimination).

58. *Parish*, 506 F.2d at 1033 (concluding that given the NCAA's national scope and the government's concern with education, the government would step in and fill the void if the NCAA suddenly disappeared).

59. *Id.* The students suggested "seven potential suspect classes: (1) blacks; (2) cultural minorities; (3) the educationally deprived; (4) persons of less than average intelligence; (5) late achieving students; (6) student athletes; and (7) impecunious student athletes." *Id.*

ity included the failure to qualify under the NCAA's "1.600 rule," the court applied a "minimum rationality" standard of review.⁶⁰ The court found no "property" or "liberty" interest and held that the due process clause afforded no protection to the athletes.⁶¹

The constitutionality of the "1.600 rule" again faced a challenge in *McDonald v. NCAA*.⁶² The *McDonald* court decided that the individual student-athlete possesses no constitutionally protected interest in his institution's membership and participation in NCAA activities.⁶³ Thus, the court held that because the NCAA does not have the power to suspend or discipline an athlete who violates the NCAA's rules and regulations, the NCAA is not a state actor.⁶⁴

2. *The Weakling Versus the Bully: The Student-Athlete Tries to Fight Back*

In *Wiley v. NCAA*,⁶⁵ the Court of Appeals for the Tenth Circuit found that student-athletes who are displeased with their high school athletic associations or the NCAA, absent clearly defined constitutional principles, do not present substantial federal questions.⁶⁶ In this case, Wiley, an athlete at the University of Kentucky, brought suit after the NCAA declared him ineligible because the total amount of his athletic scholarship award and a federal Basic Education Opportunity Grant (BEOG) exceeded the NCAA's financial aid limitations.⁶⁷ The court held that the case did not involve the right to a college education or to participate in intercollegiate athletics.⁶⁸ Instead, the court looked at whether there was a constitutional right to attend college, play sports, and receive a favor-

60. *Id.* at 1034 (quoting *San Antonio Ind. School Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973)). The court also rejected the appellants' due process claims because their lost opportunity to participate in tournaments and televised games resulted from the school's refusal to comply with the NCAA's rules. *See id.* at 1034 & n.16.

61. *Id.*

62. 370 F. Supp. 625, 626 (C.D. Cal. 1974) (reviewing the "1.600 rule" for a violation of the Fourteenth Amendment's due process clause).

63. *Id.* at 631.

64. *See id.* at 632. The court stated that a college's intercollegiate athletic program does not depend on the NCAA and that the individual schools may freely adopt rules and regulations they desire in order to run their athletic programs. *See id.* at 631. Because the NCAA is not a state actor, *McDonald* had no standing to assert a protectable interest under the U.S. Constitution. *See id.* at 632.

65. 612 F.2d 473 (10th Cir. 1979).

66. *See id.* at 477.

67. *See id.* at 474.

68. *See id.* at 476.

able financial arrangement.⁶⁹ The court decided that no such right exists.⁷⁰ The court's decision produced a two-fold effect: first, the court determined that the NCAA is not a state actor, and second, that student-athletes are not constitutionally guaranteed the right to attend college or participate in intercollegiate athletics.⁷¹

Further, the court in *Ross v. Creighton University*⁷² closed other avenues of recourse available to the student-athlete.⁷³ Ross accepted a scholarship to play basketball at Creighton University (Creighton) despite scoring in the bottom fifth percentile of individuals taking the ACT.⁷⁴ The school promised sufficient tutoring for Ross to remedy his academic shortcomings and to ensure that he would "receive a meaningful education while at Creighton."⁷⁵ Although Ross attended Creighton from 1978 until 1982, he maintained a D average and had "the reading skills of a seventh grader" when he left.⁷⁶ Ross consequently sued Creighton on three separate theories of negligence, all of which the court denied.⁷⁷ Ross also alleged that Creighton breached an oral and a written contract which stated that Ross promised to play on Creighton's basketball team in exchange for the opportunity to participate meaningfully in the school's academic program.⁷⁸ The court held that the lower court

69. *See id.*

70. *See id.* at 477.

71. *See id.* at 476-77. Judge Logan's dissent stated that "[t]here is state action in the application of NCAA rules; their enforcement by state university members is so intertwined with the state-controlled educational process that judicial evaluation of the conduct is warranted." *Id.* at 479 (Logan, J., dissenting).

72. 957 F.2d 410 (7th Cir. 1992).

73. *See generally id.*

74. *See id.* at 411 ("[T]he average freshman admitted to Creighton with [Ross] scored in the upper twenty-seven percent.").

75. *Id.*

76. *Id.* at 412. Ross completed 96 of the 128 credits necessary to graduate, but took classes including Marksmanship and Theory of Basketball which did not count toward his university degree. *See id.*; *see also* Bill Brubaker, *Minimum Standard, Maximum Dispute*, WASH. POST, July 25, 1999, at D1 (reporting that Ross revealed in print and on television that he had not mastered reading "until he joined a class of third graders" after leaving Creighton).

77. *See Ross*, 957 F.2d at 412. Ross claimed that Creighton "committed 'educational malpractice' by not providing him with a meaningful education and preparing him for employment following college" and "negligently inflicted emotional distress upon him by enrolling him in a stressful university environment for which he was not prepared," and subsequently failed to help him survive. *Id.* Ross also urged the court to adopt a new cause of action for the tort of "negligent admission," which would allow a "woefully unprepared student" to recover damages from the admitting institution. *Id.*

78. *See id.* at 412, 415-16 (explaining Ross's contract claim as alleging that Creighton

erred in dismissing the validity of the contract claim.⁷⁹ However, the court emphasized that the judiciary generally should not play a major role in supervising the relationships between student-athletes and colleges.⁸⁰ Ultimately, the court only remanded Ross's "specific and narrow claim that he was barred from *any* participation in and benefit from the University's academic program," which appeared to leave the door slightly open for similar claims in the future.⁸¹

3. Finding the NCAA To Be a State Actor?

Perhaps the most infamous and controversial case concerning the NCAA's role as a state actor was *NCAA v. Tarkanian*.⁸² The *Tarkanian* court held by a 5-4 margin that the NCAA was not a "state actor" under the Fourteenth Amendment's due process clause.⁸³ The case involved the NCAA placing the University of Nevada at Las Vegas (UNLV) on probation after uncovering that UNLV and its head coach, Jerry Tarkanian, violated numerous NCAA rules.⁸⁴ The NCAA ordered that UNLV show cause as to why the NCAA should not impose additional penalties on the university.⁸⁵ Facing a potential demotion and a drastic pay cut, Tarkanian brought suit alleging that the NCAA deprived him of due process under the Fourteenth Amendment.⁸⁶

The Court distinguished state action that warrants scrutiny under the Fourteenth Amendment's Due Process Clause from private conduct that receives no such protection.⁸⁷ In deciding that the NCAA did not fall

denied Ross the opportunity to benefit from any academic program or tutoring service, disallowed him to "red-shirt," and failed to financially support his college education).

79. See *id.* at 417. This type of contractual claim may nevertheless provide the student-athlete with the best chance of success against the NCAA. See Porto, *supra* note 19, at 130. Some argue that the nature of athletic scholarships may confer upon the athlete contractual "entitlements" to participate in college sports and to enjoy economic benefits in the scholarship agreement and freedom from arbitrarily losing these entitlements. *Id.*

80. See *Ross*, 957 F.2d at 417 (pointing out that courts likewise should not create new relationships between schools and student-athletes).

81. *Id.* Today, Ross is a school custodian and is working toward a college degree in hopes of becoming a guidance counselor. See Brubaker, *supra* note 76, at D1.

82. 488 U.S. 179 (1988).

83. *Id.* at 180, 199.

84. See *id.* at 181. NCAA investigators discovered 38 NCAA violations by UNLV personnel, 10 of which Tarkanian committed. See *id.* The most serious finding indicated that Tarkanian "had violated the University's obligation to provide full cooperation with the NCAA investigation." *Id.* at 186.

85. See *id.* at 181 (stating that the NCAA would impose a penalty unless the university broke ties with Tarkanian).

86. See *id.*

87. See *id.* at 191 & n.11.

within the meaning of a “state actor” under the Fourteenth Amendment to the Constitution, the Court acknowledged the close relationship between the NCAA and its member institutions.⁸⁸ The Court concluded that the conduct causing the deprivation of a federal right could not be attributed to the state; therefore, no state action occurred.⁸⁹

More recently, a student in *NCAA v. Smith*⁹⁰ attempted to sustain a private action against the NCAA, claiming that the NCAA’s receipt of dues brought the association within the scope of Title IX of the Education Amendment of 1972.⁹¹ Title VI and Title IX employ the same language to describe the benefited class “[e]xcept for the substitution of the word ‘sex’ in Title IX to replace the words ‘race, color, or national origin in Title VI.’”⁹² The Supreme Court held that dues collected by entities that indirectly benefit from federal assistance, such as the NCAA, are insufficient to provide the entities with Title IX coverage.⁹³ Therefore, the Court concluded that a more significant nexus must be established in order to consider the NCAA a state actor.⁹⁴ This ruling suggests that anyone attempting to sue the NCAA must carry out the almost impossible task of showing that the NCAA is a state actor in order to subject it to suit under either Title VI (like *Cureton*) or Title IX (like *Smith*).⁹⁵

88. *Id.* at 191, 194-95. The Court determined that the NCAA’s actions could constitute state action if UNLV utilized the NCAA’s rules as state rules. *See id.* at 194.

89. *See id.* at 199.

90. 525 U.S. 459 (1999).

91. *See id.* at 462.

92. *Cannon v. University of Chicago*, 441 U.S. 677, 694-95, 703 (1979) (“We have no doubt that Congress intended to create Title IX remedies comparable to those available under Title VI and that it understood Title VI [of the Civil Rights Act of 1964] as authorizing an implied private cause of action for victims of the prohibited discrimination.”).

93. *See Smith*, 525 U.S. at 468. “Title IX, like its model Title VI, sought to accomplish two related, but nevertheless somewhat different, objectives. First, Congress wanted to avoid the use of federal resources to support discriminatory practices; second, it wanted to provide individual citizens effective protection against those practices.” *Cannon*, 441 U.S. at 704.

94. *See Smith*, 525 U.S. at 468.

95. *See Id.* at 470; *Cureton v. NCAA*, 37 F. Supp. 2d 687, 694 (E.D. Pa. 1999), *rev’d*, 198 F.3d 107 (3rd Cir. 1999), *on remand to 2000 U.S. Dist. LEXIS 4790* (E.D. Pa. Apr. 13, 2000), *reconsideration denied* by 2000 U.S. LEXIS 6526 (E.D. Pa. May 12, 2000); *Parish v. NCAA*, 506 F.2d 1028, 1031 & n.6 (5th Cir. 1975) (describing the distinction between “under color of state law” and “state action” as semantic). “Under color of state law” is required by 42 U.S.C. § 1983, while “state action” is reflective of the Fourteenth Amendment’s requirement. *Id.*

4. Enter Cureton: The Attack Against Proposition 16 Begins

In *Cureton v. NCAA*,⁹⁶ the fierce debate regarding initial eligibility standards reemerged.⁹⁷ Four African-American student-athletes failed to achieve the NCAA's minimum standardized test requirements which prevented them from participating in NCAA athletics during their first year.⁹⁸ The Cureton nonqualifiers claimed that the NCAA denied them athletic scholarships (or provided less financial aid), recruiting opportunities (or fewer opportunities), and/or admission to Division I schools.⁹⁹ Cureton attacked the Proposition 16 standard and indirectly attacked the NCAA.¹⁰⁰ The nonqualifiers claimed that the NCAA unlawfully denied them educational opportunities and that minimum standardized test score requirements had an "unjustified disparate impact on African-American student-athletes."¹⁰¹

96. 37 F. Supp. 2d 687 (E.D. Pa. 1999), *rev'd*, 198 F. 3d 107 (3rd Cir. 1999), *on remand to* 2000 U.S. Dist LEXIS 4790 (E.D. Pa. Apr. 13, 2000), *reconsideration denied by* 2000 U.S. LEXIS 6526 (E.D. Pa. May 12, 2000). Part I.B.4 of this Comment discusses the *Cureton* cases in detail. It is important to note that *Cureton* was recently dismissed due to a technicality and the presiding judge's unwillingness to allow the claim to be amended. The original plaintiffs in *Cureton v. NCAA*, 37 F. Supp. 2d 687 (E.D. Pa. 1999), *rev'd*, 198 F. 3d 107 (3rd Cir. 1999), *on remand to* 2000 U.S. Dist LEXIS 4790 (E.D. Pa. Apr. 13, 2000), *reconsideration denied by* 2000 U.S. LEXIS 6526 (E.D. Pa. May 12, 2000), unsuccessfully attempted to use a "disparate impact" argument under Title VI of the Civil Rights Act of 1964. The original plaintiffs unsuccessfully attempted to amend the suit to add Title VI "purposeful discrimination" claims. As a result, two new plaintiffs have filed a class action suit that favors this "purposeful discrimination" argument. In addition, the plaintiffs have also added claims under the Americans with Disabilities Act, the Rehabilitation Act of 1973, and Section 1981 of the Civil Rights Act of 1866 in order to attack Proposition 16 and subject the NCAA to a federal claim. See Shannon P. Duffy, *Taking Another Shot at Changing the NCAA's Use of SAT Standards*, THE LEGAL INTELLIGENCER, June 27, 2000, at 3. Despite the court's dismissal of the *Cureton* case, the issues addressed in this Comment are unaffected and remain current and valid in relation to Title VI.

97. See generally *Cureton*, 37 F. Supp. 2d at 687.

98. See *id.* at 689. This article collectively refers to the four student-athletes as the "Cureton nonqualifiers."

99. See *id.*

100. See *id.*

101. *Id.* To make a prima facie case of disparate impact discrimination, the plaintiff(s) must first show that "the application of a specific facially neutral selection practice has caused an adverse disproportionate effect, to wit, excluding the plaintiff and similarly situated applicants from an educational opportunity." *Id.* at 697. Once the plaintiff proves his prima facie case, the burden then shifts to the defendant who must show that the disproportionate effect is an educationally justified necessity. See *id.* Even if the defendant meets this burden, a plaintiff may discredit the given justification or provide an "equally effective alternative" that serves the educational need with "less racial disproportionality." *Id.* The plaintiff, however, always carries the ultimate burden of proving that there was a "discriminatory effect." *Id.*

The district court required the Cureton nonqualifiers, in order to sustain a private action under Title VI, to establish that (1) the NCAA receives federal financial assistance, and (2) Proposition 16's minimum test score requirement actually causes a disparate impact on African-American student-athletes.¹⁰²

The first prong of the test required the Cureton nonqualifiers to show that the NCAA is a state actor.¹⁰³ Following the NCAA's admission that it collects dues from schools who receive federal funds, the Cureton nonqualifiers concluded that the NCAA "indirectly receives" federal funds and, therefore, is subject to Title VI.¹⁰⁴ The court followed the *NCAA v. Smith* decision¹⁰⁵ and did not allow the Cureton nonqualifiers to rely solely on the NCAA's indirect receipt of federal funds.¹⁰⁶ Nevertheless, the court held that the NCAA is a "recipient" of federal funds because its members have given administrative and governing control of their intercollegiate athletic programs to the NCAA and the NCAA directly controls federal funds through their complete control of the NYSP Fund.¹⁰⁷ As a result, the *Cureton* court found "a nexus between the NCAA's allegedly discriminatory conduct with regards to intercollegiate athletics" and its receipt of federal funds, thus subjecting Proposition 16 to a Title VI challenge.¹⁰⁸

The second prong required the Cureton nonqualifiers to prove that the minimum score requirement disparately impacted African-American student-athletes.¹⁰⁹ The court held that the Cureton nonqualifiers dem-

102. See *id.* at 689.

103. See *id.* at 692-96.

104. *Id.* at 692. The Cureton nonqualifiers also attempted to argue that the NCAA receives federal funds through the National Youth Sports Program Fund (NYSP Fund), which is the NCAA's "alter ego." *Id.* at 692 & n.3 (explaining that the Fund "provides summer education and sports instruction on the campuses of NCAA member and non-member institutions" in an attempt to foster youth enrichment). The court originally expressed concern over the Fund in a memorandum written by Judge Ronald L. Buckwalter. See *Cureton v. NCAA*, No. 97-131, 1997 U.S. Dist. LEXIS 15529, at *7. (E.D. Pa. Oct. 8, 1997) (mem.). In the absence of a sufficient record, Buckwalter said that if the Fund turned out to be a sham to disguise the NCAA's direct benefit from using federal funds, then the NCAA would, in fact, receive federal financial assistance. *Id.*

105. See *supra* notes 90-95 and accompanying text for a discussion of the *NCAA v. Smith*, 525 U.S. 469 (1999).

106. See *Cureton*, 37 F. Supp. 2d at 693 (maintaining that the Cureton nonqualifiers may still combine this theory with other facts to prove the NCAA's receipt of federal funds).

107. *Id.* at 692-96.

108. *Id.* at 696.

109. See *id.* at 689. The court concluded that "raising student-athlete graduation rates

onstrated sufficient proof to sustain a Title VI claim and, therefore, declared Proposition 16 illegal, and permanently enjoined its further use.¹¹⁰ The NCAA appealed and the United States Court of Appeals for the Third Circuit granted a stay allowing Proposition 16 to continue.¹¹¹

The Third Circuit reversed the lower court's decision in a 2-1 opinion that never reached the merits of the case.¹¹² The court struck down the ruling because the NCAA is not a state actor.¹¹³ The panel reasoned that Title VI bans intentional discrimination,¹¹⁴ but the *Cureton* suit involved regulations that allow a claim of disparate impact.¹¹⁵ The court declined to address whether the NCAA directly received federal funding and held that the NCAA does not have to conform with Title VI and is not precluded from discriminating.¹¹⁶ The court continued to say that Title VI is "program specific," meaning that the claims brought pursuant to the regulations require the NCAA to receive federal funds directly.¹¹⁷

On the other hand, the language of Title VI recognizes an intentional discrimination claim, which can sustain a suit with only indirect receipt of federal funds.¹¹⁸ However, because the *Cureton* nonqualifiers' lawyers brought this case under a disparate impact theory, they had to show that the NCAA directly received the funds.¹¹⁹ The court invalidated all of the appellants' arguments, found that the NCAA directly received the funds, and remanded the case to the district court for entry of summary judg-

is a legitimate goal of the NCAA, but closing the gap between black and white student-athlete graduation rates is not." *Id.* at 706.

110. *See id.* at 712, 715. The court stated that the NCAA gave no evidence to support the claim that minimum cutoff scores actually raised student-athlete graduation rates. *Id.* at 712.

111. *See NCAA Will Wait to Alter Eligibility Requirements*, WASH. POST, Aug. 6, 1999, at D8. In the district court the NCAA unsuccessfully argued that a stay was necessary because invalidation of Proposition 16 would "cause chaos during the [upcoming] recruiting period." Athelia Knight & Bill Brubaker, *Court Grants NCAA a Stay on Proposition 16*, WASH. POST, Mar. 31, 1999 at D1.

112. *See Cureton v. NCAA*, 198 F.3d 107, 118 (3rd Cir. 1999).

113. *See id.* at 118.

114. *See, e.g., Alexander v. Choate*, 469 U.S. 287, 292-93 (1985); *Guardians Ass'n v. Civil Serv. Comm'n of the City of New York*, 463 U.S. 582, 589, 592 (1983).

115. *See Shannon P. Duffy, Attorneys Try to Revive NCAA-SAT Suit by Changing Legal Theories*, THE LEGAL INTELLIGENCER, Feb. 29, 2000, at 1 [hereinafter Duffy, *Changing Legal Theories*] (explaining that Title VI's implementing regulations allow such a claim).

116. *See Cureton*, 198 F.3d at 114.

117. *Id.* at 115; *see also* Duffy, *Changing Legal Theories*, *supra* note 115, at 1.

118. *See Cureton*, 198 F.3d at 113; *see also* Duffy, *Changing Legal Theories*, *supra* note 115, at 1.

119. *See Cureton*, 37 F. Supp. 2d at 696-97.

ment in favor of the NCAA.¹²⁰

II. DETERMINING THE EFFECTS OF PROPOSITION 16: A STUDY IN FUTILITY

Overruling the lower court on a technicality, the Third Circuit never approached the merits regarding the legality of the NCAA's initial eligibility standards.¹²¹ The *Cureton* lawyers tried to pursue other options before taking the case to the Supreme Court.¹²² The lawyers filed an amended complaint, alleging "purposeful discrimination" because the court stated that the NCAA cannot be sued under a "disparate impact" claim.¹²³ The plaintiffs hoped their change in legal theories would avoid the Third Circuit's negative decision and allow the *Cureton* nonqualifiers to sustain a viable claim against the NCAA.¹²⁴ The court dismissed the amended complaint, however, stating that "it was too late to change the entire theory of the case."¹²⁵

A. Big Business or Student Fulfillment: Identifying the NCAA's Real Purpose

The rapid development of college athletics into a multimillion dollar business has challenged the NCAA in its effort to preserve academic standards.¹²⁶ Unfortunately, colleges have realized the potential implica-

120. See *Cureton*, 198 F.3d at 118.

121. See *id.*; see also Jim Smith, *The NCAA's Controversial Proposition 16 Lives On*, PHILA. DAILY NEWS, Dec. 24, 1999.

122. See Duffy, *Changing Legal Theories*, *supra* note 115, at 1.

123. Plaintiffs' Amended Complaint at 1, *Cureton v. NCAA*, 198 F.3d 107 (3rd Cir. 1999) (No. 97-131). A claim of intentional discrimination is recognized directly in the language of the Title VI. See Duffy, *Changing Legal Theories*, *supra* note 115, at 1. On the other hand, a disparate impact claim can be found only through the statute's implementing regulations, which require direct receipt of federal funds to subject the NCAA to any kind of suit. See *id.*

124. See Duffy, *Changing Legal Theories*, *supra* note 115, at 1. Adele P. Kimmel, one of the attorneys for the *Cureton* nonqualifiers, was quoted as saying: "The battle is far from over We will ask [the court] to rehear it. If necessary we'll ask the entire court to hear arguments. I'm certain that no matter what the decision, both sides will want to take it to the Supreme Court. This is that important." Joe Drape, *Rehearing Sought in Reversal on Test-Based Eligibility Suit*, N.Y. TIMES, Dec. 24, 1999 at D4.

125. Shannon P. Duffy, *Taking Another Shot at Changing the NCAA's Use of SAT Standards*, THE LEGAL INTELLIGENCER, June 27, 2000, at 3 (quoting Ronald L. Buckwater, the U.S. district court judge who ruled in the first *Cureton* suit that "the NCAA's Proposition 16 had an illegal disparate impact on black students").

126. See WEISSBERG, *supra* note 3, at 20. Immense television broadcast contracts have helped television become a major source of revenue for universities. See SACK AND STAUROWSKY, *supra* note 9, at 5. In 1996, CBS and the NCAA entered into a deal for

tions of having a football or basketball powerhouse to the extent that student-athlete's athletic talents have become more of a concern than their academic failings.¹²⁷ Schools that exploit their student-athletes are more inclined to overlook a student's 2.0 GPA or 700 SAT score and focus on his twenty-eight point averages or 350 passing yards per game because there is so much on the line.¹²⁸

As a result of the high profile nature of college athletics, as well as much-publicized functional illiterates,¹²⁹ the NCAA greatly emphasizes

\$1.75 billion, which gave CBS the right to broadcast the NCAA men's basketball tournament. *See id.* The NCAA and CBS recently renewed this agreement for 11 years for a staggering \$6 billion. *See* Leonard Shapiro & Mark Asher, *CBS Retains NCAA: \$6 Billion for 11-Year Deal*, WASH POST, Nov. 19, 1999, at D1. Beginning in 2003, the deal pays the NCAA \$545 million annually and runs until 2013. *See id.* Three weeks of televising the NCAA basketball tournament costs more to air than entire seasons for all other professional sports except professional basketball and football. *See id.* The NCAA's own requirements add to the commercialization of sports, including a requirement that Division IA football programs maintain stadiums with at least a capacity of 30,000 and a paid attendance average of 17,000 per home game. *See* SACK & STAUROWSKY, *supra* note 9, at 5.

127. *See* WEISSBERG, *supra* note 3, at 20-22 (pointing out that a college's entire image, which includes cash, television deals, and even the expectations of entire states such as Nebraska, Kansas, Kentucky, and Indiana, may ride, in part, on the shoulders of student-athletes).

128. *See generally id.* at 22. Weissberg illustrates the case of Marcus Dupree, a 17 year-old, who possessed a tremendous combination of speed, power, and other intangible factors for which college recruiters look. *See id.* at 49. Weissberg notes that Dupree's "numbers" were not his SAT scores or GPA, but his 4.3 second 40 yard dash, 360 pound bench press, 5,284 rushing yards, and 87 touchdowns throughout his high school career. *Id.* A star athlete like Dupree may lead a school to a Final Four tournament appearance or a football bowl appearance, which may earn a school upwards of \$1 million. *See* SPERBER, *supra* note 3, at 42 (explaining that the 1988 Final Four teams, which included Kansas, Oklahoma, Duke, and Arizona, received \$1,153,000 each, but actually took home between \$138,000-\$840,000). For example, teams participating in either the Sugar Bowl or the Rose Bowl earn their respective schools a payout of over \$12.5 million. *See* Peter Keating, *Playoff Payoff*, ESPN: THE MAGAZINE, Sept. 18, 2000 at 138. Conference "distributions" account for the discrepancy in the gross and net amounts each school earns and receives. SPERBER, *supra* note 3, at 42. Each conference designates its own distribution system to split the total amount earned by the remaining conference schools, which means that only schools not involved in a conference retain their own earnings. *See id.* For example, the Pacific-10 (Pac-10) Conference splits evenly all NCAA payouts with all conference members. *See id.* For example, in 1988 Arizona earned \$1,153,000 for its Final Four appearance and Oregon State earned \$230,700 for its first-round appearance; however, due to the even split, each Pac-10 school received \$138,000. *See id.* The Atlantic Coast Conference (ACC) permits its members to retain their own first-round earnings and 70% of all other round earnings. *See id.* The NCAA gets its share as well: approximately 50% of the tournament's total net receipts to pay "tournament expenses and to balance its own books." *Id.* at 43.

129. *See* SPERBER, *supra* note 3, at 218; *see also supra* note 15 and accompanying text (describing Dexter Manley and other college athletes who could not read after graduating

the implementation and legitimacy of the stringent guidelines for incoming student athletes.¹³⁰ Proposition 16, although subjected to challenge in *Cureton*,¹³¹ is the most recent attempt to preserve the integrity of college athletics. However, the district court's holding in *Cureton* attacks the pervasive, yet subtle racism that Proposition 16 perpetuates.¹³² Some view *Cureton* to portray the NCAA as a problematic organization struggling for control.¹³³

B. Identifying the Culprit: Pointing the Finger at the NCAA

1. Piercing the NCAA's Corporate Veil

Conceivably, the NCAA is responsible for the problem caused by minimum initial eligibility standards.¹³⁴ The NCAA appears to hide behind a veil of untouchability while it arbitrarily promulgates rules with sweeping, yet largely unpopular implications.¹³⁵ Proponents of the position that the NCAA is a state actor lament that member institutions have little recourse against the NCAA and anything short of full-fledged sub-

from college).

130. See WEISSBERG, *supra* note 3, at 20-22. The American system is unique in that universities "assume responsibility for providing the public with sports entertainment." JAMES A. MICHENER, *SPORTS IN AMERICA* 188 (1976). It would be unheard of for European colleges and universities to award scholarships to an illiterate athlete solely for the entertainment of that city's spectators. See *id.* ("Our system is an American phenomenon, a historical accident which developed from the exciting football games played by Yale and Harvard . . . and certain other schools during the closing years of the nineteenth century.").

131. See generally *Cureton v. NCAA*, 37 F. Supp. 2d 687 (E.D. Pa. 1999), *rev'd*, 198 F. 3d 107 (3rd Cir. 1999), *on remand to* 2000 U.S. Dist LEXIS 4790 (E.D. Pa. Apr. 13, 2000), *reconsideration denied by* 2000 U.S. LEXIS 6526 (E.D. Pa. May 12, 2000).

132. See generally *id.* at 714-17; Duffy, *Changing Legal Theories*, *supra* note 115, at 1 (quoting the *Cureton* plaintiff's attorneys to say that the litigation revealed "admissions made by the NCAA that Proposition 16 was motivated by race").

133. See, e.g., John A. Reding & Peter C. Meier, *Athletes Cry 'Foul!' Over NCAA Rules*, NAT'L L.J., Nov. 17, 1997, at B7 & nn.1-17 (indicating that *Cureton* has prompted the NCAA to change its position through the threat of litigation and public criticism).

134. See HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 93 (arguing for the implementation of new standards that could ultimately "raise the academic preparation of high school athletes [that] should benefit future college student-athletes").

135. See, e.g., Reding & Meier, *supra* note 133, at B7. The NCAA routinely receives criticism for its "vague" and "voluminous" manual, which contains rules that all member institutions are expected to comply with and enforce. Kevin E. Broyles, *NCAA Regulation of Intercollegiate Athletics: Time For a New Game Plan*, 46 ALA. L. REV. 487, 507-08 (1995). However, "[t]he NCAA recognizes no defenses to rules violations other than that the act did not occur." *Id.* at 508.

mission to the NCAA is akin to institutional suicide.¹³⁶

In *NCAA v. Tarkanian*, the Supreme Court concluded that "UNLV retained the authority to withdraw from the NCAA and establish its own standards."¹³⁷ The Court further stated, however, that "[n]either UNLV's decision to adopt the NCAA's standards nor its minor role in their formulation" was enough to conclude that the NCAA acted under color of state law when it devised standards that govern athlete recruitment, eligibility, and academic performance.¹³⁸ The U.S. district court in *Cureton v. NCAA* acknowledged that member institutions, although possessing the ability to reject NCAA legislation, would be subject to severe NCAA sanctions or "forced" to forgo NCAA membership if they did so.¹³⁹ The *Cureton* court was the first court to realize that the NCAA has power to create rules that universities must follow; it was also the first court to classify the NCAA as a state actor and subject it to constitutional claims.¹⁴⁰

Unfortunately, little recourse is available to college student-athletes in the event that universities exploit them for the school's own athletic pur-

136. See generally *Board of Regents of the Univ. of Okla. v. NCAA*, 546 F. Supp. 1276 (W.D. Okla. 1982). This district court explained:

It is true that membership is voluntary in the sense that a member institution may withdraw from NCAA at any time. However, it is clear from the evidence that an institution which withdraws or is expelled from the NCAA could no longer operate a fully-rounded intercollegiate athletic program. Non-member institutions could not compete in the prestigious NCAA championship events in such sports as baseball, basketball, track, swimming, wrestling and gymnastics. They would therefore be unable to recruit quality athletes into their programs. Its football team could not play on television against members of the NCAA. As a practical matter, membership in the NCAA is a prerequisite for institutions wishing to sponsor a major, well-rounded athletic program.

Id. at 1288.

137. *NCAA v. Tarkanian*, 488 U.S. 179, 194-95 (1988).

138. *Id.* at 195; see also generally *Board of Regents*, 546 F. Supp. at 1276. It is worth noting that the Supreme Court affirmed the lower court decisions in *Board of Regents*, finding that the NCAA held a monopoly and that "by curtailing output and blunting the ability of member institutions to respond to consumer preference, the NCAA has restricted rather than enhanced the place of intercollegiate athletics in the Nation's life." *NCAA v. Board of Regents of the Univ. of Okla.*, 468 U.S. 85, 120 (1984).

139. *Cureton v. NCAA*, 37 F. Supp. 2d 687, 695-96 (E.D. Pa. 1999), *rev'd*, 198 F. 3d 107 (3rd Cir. 1999), *on remand to* 2000 U.S. Dist LEXIS 4790 (E.D. Pa. Apr. 13, 2000), *reconsideration denied by* 2000 U.S. LEXIS 6526 (E.D. Pa. May 12, 2000) (realizing that either situation results in "grave consequences" for member institutions). Member institutions must comply with the NCAA's laws or face sanctions. See *id.* at 695 (explaining that legislation adopted by the NCAA, such as Proposition 16, becomes "enforceable and binding" upon member institutions).

140. *Id.* at 696.

poses.¹⁴¹ *Ross v. Creighton University*¹⁴² illustrates the problems student-athletes face exacting revenge on a school that abused them. The District Court in *Creighton* did not find that the university negligently admitted Ross as a matter of public policy.¹⁴³ The court stated that a negligent admission action would unduly burden schools and jeopardize marginal students' chances of attending college if schools were required to factor costs of tort damages resulting from negligent admission actions into admissions decisions.¹⁴⁴ This decision leaves contract principles as the narrow opening for students to redress their grievances with the university.¹⁴⁵

In light of the lower court's initial ruling in *Cureton*, chances of success against the NCAA are improving.¹⁴⁶ The new suit filed by Cureton's attorneys, for example, may prove a more effective way to attack the NCAA and Proposition 16.¹⁴⁷ The NCAA is no longer as indestructible, and perhaps this litigation will cause the NCAA to readjust its policies.¹⁴⁸ At a minimum, the *Cureton* litigation indicates a breakdown in the NCAA's formerly strong legal position.¹⁴⁹

141. See SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 126-27.

142. 957 F.2d. 410, 411-13. (7th Cir. 1992).

143. *Id.* at 413.

144. *See id.*

145. See SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 127.

146. See Reding & Meier, *supra* note 133, at B7 (comparing the chance of a victory against the NCAA with defeating Notre Dame on its home turf: "hard-fought and hard to come by"). The NCAA also lost a devastating case that cost the NCAA \$67 million. See Mark Conrad, *Latest Jury Award Slam-Dunks the NCAA*, N.Y.L.J., May 15, 1998, at 1. Courts have awarded more than 1,900 coaches with \$22.3 million (which automatically triples under the Clayton Act) because the NCAA conspired to restrain the winning coaches' salaries with its "restricted-earnings" rule. *Id.* at 1. This rule, promulgated because of the increasing costs of Title IX compliance in the early 1990s, required one coach in every sport other than football to be designated "a restricted earnings coach" and limited that coach's earnings to \$12,000 for the academic year and \$4,000 during the summer. *Id.* A group of these coaches challenged the rule and won because the court concluded that the price fixing, referred to as a horizontal restraint on competition, unreasonably restrained competition. *Id.*

147. See *supra* note 96 (discussing the new case filed by the same law firm involved in the initial *Cureton* suit); Duffy, *Changing Legal Theories*, *supra* note 115, at 1.

148. See Duffy, *Changing Legal Theories*, *supra* note 115, at 1 (suggesting that the recent litigation has led to this new development); see generally Reding & Meier, *supra* note 133, at B7. Future litigation against the NCAA is likely. See *id.* The U.S. Department of Justice recently notified the NCAA that it believes that the association's initial eligibility requirements discriminate against learning-disabled students. See *id.*

149. See generally Reding & Meier, *supra* note 133, at B7. Others have claimed that the NCAA should be subject to judicial review. See, e.g., Porto, *supra* note 19, at 133 (using the example of restoration of eligibility to support his claim). Because the NCAA exhibits "exclusive control" over college athletics and, in turn, the student-athlete's eligibility

2. *The NCAA's Search for Effective Minimum Requirements: A Premature Result?*

That NCAA athletic administrators, instead of admissions experts, created Proposition 48 without relying on any scientific evidence, explains the harsh criticism it has received.¹⁵⁰ One group of athletic administrators established 700 as the minimum SAT score, but did not use any scientific evidence to reach this decision.¹⁵¹ Further angering opponents is the fact that no African-Americans participated in the original creation of the rule.¹⁵² According to the College Board, the sponsor of the SAT, African-American students entering college in 1981 attained an average SAT score of 694, while their white counterparts averaged an SAT score of 925.¹⁵³ Despite not considering this data in reaching its decision, the NCAA Convention still approved this measure in 1983.¹⁵⁴

The most serious charge levied against the NCAA claimed that the development of initial eligibility rules was fueled by a racist desire to exclude African-American athletes in response to their dominance in college sports.¹⁵⁵ This damaging proposition gains credibility by the fact that

for financial aid and a professional athletic career, the integrity of the system essentially depends on judicial review. *Id.* The argument, however, emphasizes judicial deference to the NCAA in cases where a student-athlete earns a degree. *See id.* at 134. Either way, judicial review may promote constructive change because it would remind the NCAA that "its failure to respond legislatively to its critics will [result in] protracted, expensive, and potentially embarrassing litigation." *Id.*

150. *See* DEALY, *supra* note 28, at 114; *see also* SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 108-09 (reporting that African-Americans criticized Proposition 48 for its failure to include African-Americans). The participants, including Big Eight Conference commissioner Chuck Neinas, Vince Dooley of Georgia, Joe Paterno of Penn State, Bobby Knight of Indiana, Dean Smith of North Carolina, and Don Canham of Michigan, convened at Sapelo Island, Georgia to draft the proposal. *See* DEALY, *supra* note 28 at 114. The American Council on Education (ACE), a trade association of the nation's top universities, organized another group headed by Harvard University's Derek Bok. *See id.* The so-called "Bok Committee," attended the 1983 NCAA Convention hoping to reform the Sapelo Island Group's proposals. *Id.* At the convention athletic directors and faculty athletic representatives shrewdly convinced the NCAA to adopt an amendment to accept "partial qualifiers." *Id.* at 115. The concept of the "partial qualifier," unbeknownst to the "Bok Committee," permitted the recruiting practices that Proposition 48 attempted to eliminate. *Id.*

151. *See* DEALY, *supra* note 28, at 114.

152. *See* SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 108. Reverend Jesse Jackson was perturbed by the omission of blacks on the panel: "When we read about a proposition, and we were not involved in discussing or writing the proposition, that is insulting." *Id.* at 103.

153. *See* Brubaker, *supra* note 76, at D4.

154. *See* DEALY, *supra* note 28, at 114-15.

155. *See* Linda S. Greene, *The New NCAA Rules of the Game: Academic Integrity or*

the NCAA must have known of the staggering standardized test discrepancies that occurred along racial lines prior to the adoption of the rules.¹⁵⁶ The district court in *Cureton* recognized the arbitrary nature by which the NCAA standard developed and consequently found that a disparate impact existed.¹⁵⁷ The NCAA's memoranda, studies, and admissions recognize these shortcomings.¹⁵⁸ However, the NCAA continuously argues that the cutoff score causes no disparate impact based on a comparison of ineligibility standards under Proposition 16 and other equally effective, less discriminatory alternatives.¹⁵⁹ The *Cureton* plaintiffs advocated much needed change within the NCAA system.¹⁶⁰

C. Minimum Standards: Negatives, Positives, and False Positives

1. A Minority of Approval: Looking for a Diamond in the Rough

Proponents of Proposition 16 and eligibility standards reason that the minimum standards are absolutely necessary and claim that some of those who question the academic standards may possess ulterior motives.¹⁶¹ Other proponents claim that tougher standards give credibility to the universities and increase the quality of the schools.¹⁶² Proponents need only point to the increased graduation rates since the implementation of Proposition 48 and Proposition 16.¹⁶³ Unfortunately, statistics that

Racism?, 28 ST. LOUIS U. L.J. 101, 117 & n.81 (1984) (referring to a 1983 telephone conversation with Jesse Stone, President of Southern University, Baton Rouge, Louisiana).

156. See *id.* at 117.

157. *Cureton v. NCAA*, 37 F. Supp. 2d 687, 700-01 (E.D. Pa. 1999), *rev'd*, 198 F. 3d 107 (3rd Cir. 1999), *on remand to 2000 U.S. Dist. LEXIS 4790* (E.D. Pa. Apr. 13, 2000), *reconsideration denied by 2000 U.S. LEXIS 6526* (E.D. Pa. May 12, 2000).

158. See generally Memorandum, *supra* note 14; Brief for Appellees, *supra* note 14.

159. See *Cureton*, 37 F. Supp. 2d. at 699-700; Brief for Appellees, *supra* note 14, at 30.

160. See Brief for Appellees, *supra* note 14, at 28-29; see generally Memorandum, *supra* note 14.

161. See, e.g., Leroy D. Clark, *New Directions for the Civil Rights Movement: College Athletics as a Civil Rights Issue*, 36 HOW. L.J. 259, 274 (1993) (mentioning that the standards may be a "ploy of some with ulterior racist motivations").

162. See Mark Asher & Jon DeNunzio, *Student-Athletes Find It Harder To Stay in Game*, WASH. POST, May 28, 1995, at A1; see also WEISSBERG, *supra* note 3, at 24-25 (illustrating a Proposition 48 success story). Rumeal Robinson entered the University of Michigan in one of the first classes subject to Proposition 48 and sat out that year because of his low test scores. See *id.* Robinson acclimated himself to college life, led the Wolverines to the 1989 National Championship, and graduated the following year. See *id.* at 25.

163. See SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 109. The freshman class of 1986-1987 was the first class affected by Proposition 48 and experienced a graduation rate of 57%—an increase of six percent from the pre-Proposition 48 classes of 1983,

support Proposition 48's great strides, when compared to graduation rates of nonstudent-athletes during the same period, are misleading because the student-athlete net increase is far less than the NCAA boasts.¹⁶⁴ Furthermore, a significant percentage of the educational problems exist in men's basketball and football, which further skews the statistics.¹⁶⁵ In fact, only 30% of college football players and 27% percent of college basketball players graduate.¹⁶⁶

Another argument for Proposition 16 is that such a rule is needed to encourage young children to study because they will know in advance what it takes to be the next Michael Jordan.¹⁶⁷ If the new rule can force young students to study, it will "lead to a generation of college athletes [earning] degrees."¹⁶⁸ For that to be true, however, educators must make a radical change and stress academics over athletics.¹⁶⁹ Supporters of minimum standards point to the problems of grade inflation and incon-

1984, and 1985. See Brief for Appellant at 9, *Cureton v. NCAA*, 198 F.3d 107 (3rd Cir. 1999) (No. 97-131) [hereinafter Brief for Appellant]; SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 108. During the same time period, African-Americans experienced a nine percent increase in their graduation rates. *Id.* at 109. By 1989, black graduation rates had reached 46% (11% higher than before to Proposition 48). See Brief for Appellant, *supra*, at 9. Another rarely mentioned statistic states that on a national scale, athlete graduation rates are higher than nonathletes (52% versus 41.5%). See McKerrow & Daly, *supra* note 1, at 63-64.

164. See Brief for Appellees, *supra* note 14, at 45. Based on slightly different numbers, student-athlete graduation rates rose 7.5% following Proposition 48 which was only, at best, a 2.5% net increase in the graduation rate. See *id.* at 44-45. Evidence also shows that this slight increase may have no correlation between graduation rates and Proposition 48, but may be a result of other factors. See *id.* at 45-46.

165. See RICHARD E. LAPCHICK, *The High School Student-Athlete: Root of the Ethical Issues in College Sport*, in THE RULES OF THE GAME: ETHICS IN COLLEGE SPORTS 17, 19 (1994) (identifying the illiteracy rate among high school football and basketball players at 25 to 30%, which is more than twice the national high school average).

166. See *id.* Perhaps the length of the college basketball season, which begins October 15 and for the teams reaching the NCAA championship does not end until early April, contributes to the low graduation rate among college basketball players. See Louis Barbash, *Student-Athletes Should Be Athletes First*, in SPORTS IN AMERICA: OPPOSING VIEWPOINTS 73, 79 (William Dudley ed., 1994). Therefore, many college basketball players only have one month at the beginning of the academic school year and one month at the end to focus solely on academics. See *id.* During the season these players must focus not only on school, but also on practice, weight lifting, conditioning, team meetings, film sessions, and games. See *id.*

167. Cf. GOLENBOCK, *supra* note 38, at 3 (explaining what is needed to get children to focus on their studies). As Golenbock points out, "[l]ook, kid, if you don't study, you don't get to be Michael Jordan." *Id.*

168. *Id.*

169. See *id.*; see also HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 94 (explaining the difficulty of separating college athletics from professional sports).

sistent GPA calculations by different high schools.¹⁷⁰ As the situation now exists, the NCAA has no choice but to stress the importance of education and to use Proposition 16 to promote integrity despite its many failings.¹⁷¹

2. The Negatives of Proposition 16 and the SAT's Failing as a Barometer

Despite the general positive elements of Proposition 16 and the eligibility standards, there are significant flaws in their use and application.¹⁷² Opponents of Proposition 16 and eligibility standards scoff at their existence,¹⁷³ and fend off advocates who point to higher graduation rates for both African-Americans and student-athletes in general.¹⁷⁴ African-American educators offer heavy criticism regarding Proposition 48, the original eligibility requirements, preceding Proposition 16.¹⁷⁵ They contend that these measures unfairly affect African-American student-athletes because blacks typically score below the minimum cutoff SAT score more often than their white counterparts.¹⁷⁶ Others claim that the SAT's verbal section is culturally biased against African-American students.¹⁷⁷ Others also claim that the NCAA's eligibility requirements encourage high school students to take easier classes to receive "A's" and "B's" instead of taking substantive classes.¹⁷⁸

Notwithstanding the benefits gained by a Proposition 16 student sitting out his first year to study, some college coaches criticize Proposition 16 for negatively affecting a great number of potential student-athletes.¹⁷⁹ A coach under a tremendous amount of pressure to win immediately may

170. See Memorandum, *supra* note 14, at 753a.

171. See generally Pentimone, *supra* note 13.

172. See *supra* notes 96-120 and accompanying text.

173. See, e.g., Pentimone, *supra* note 13, at 473-74. Some studies show that high school GPAs are better predictors of academic success than standardized tests. See Russ Gough, *The Hard Facts on Propositions 48 and 16*, SPORTING NEWS, Sept. 26, 1994, at 11.

174. See *supra* note 163 and accompanying text.

175. See, e.g., SPERBER, *supra* note 3, at 220.

176. See, e.g., *id.*

177. See, e.g., SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 111.

178. Pentimone, *supra* note 13, at 498. Some students, as a result, do not take classes based on content because a low grade in a difficult course may result in ineligibility. See Asher & DeNunzio, *supra* note 162, at A1 (quoting Gonzaga High School basketball coach, Dick Meyers).

179. Cf. SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 109 (commenting that some students possess the potential to succeed, but are not given the chance to do so because they fall short of the NCAA's Proposition 48 minimum standards).

not recruit someone who must sit out an entire season.¹⁸⁰ Another problem is that many student-athletes failing to satisfy the minimum standards lose one year of eligibility.¹⁸¹

These criticisms prevail because Proposition 16 relies heavily on standardized testing.¹⁸² In *Groves v. Alabama State Board of Education*,¹⁸³ the district court found that a minimum ACT score requirement caused a disparate impact.¹⁸⁴ The court also enjoined the State Board from further using the ACT as a method for screening the competency of future teachers because such a requirement violated the plaintiffs' Title VI rights.¹⁸⁵ *Groves*, like *Cureton*, challenged the legitimacy of the particular

180. See ALEXANDER WOLFF & ARMEN KETAYIAN, RAW RECRUITS 22-23 (1991) (explaining that coaches may be motivated by ego, competitive pride, or job security). On the other hand, many coaches take advantage of Proposition 16. See *NCAA Eligibility Mess: Fear of Commitment*, SPORTS ILLUSTRATED, Apr. 12, 1999, at 31 [hereinafter *Eligibility Mess*]. The NCAA only allows schools to offer 25 football scholarships per season. See *id.* Coaches, however, often overbook their recruits under the assumption that Proposition 16 will render a few of them ineligible to play during their first year. See *id.*; see also WOLFF & KETAYIAN, *supra*, at 131. Schools that engage in this practice are referred to as "airline schools." *Id.* A coach may sign a few high school seniors in the fall, a few more in the spring, and maybe a couple of junior-college transfers, leaving him with "more passengers than room. Somebody has to get bumped." *Id.* at 132. Coaches justify this practice by allowing themselves to believe that "natural selection" will reduce the roster to its allowed size. *Id.* If the court had decided not to enforce the stay in *Cureton*, many coaches who overbooked could have violated the NCAA's scholarship limits. See *Eligibility Mess*, *supra*, at 31. Student-athletes sign legally binding letters of intent, but coaches work around those letters by allowing players to walk-on, go to junior college, or enroll in the spring instead of in the fall. See *id.* Coaches use this ploy to give them a deeper pool of talent. See *id.*

181. See Phil Taylor, *Blackboards and Backboards*, SPORTS ILLUSTRATED, Mar. 9, 1992, at 149 (suggesting that prep schools may benefit students and schools by increasing student SAT scores).

182. See Pentimone, *supra* note 13, at 496. One of the most outspoken critics of initial eligibility standards is Temple University men's basketball coach John Chaney. See Stallman, *supra* note 14, at 1D. Chaney simply does not believe that one test can determine whether a student can succeed in college. See Michael Bradley, *One-Two Punch*, SPORTING NEWS, Jan. 17, 1994, at 36; see also generally Gary Smith, *The Whittler*, SPORTS ILLUSTRATED, Feb. 28, 1994, at 72. Chaney has said that Propositions 16 and 48 merely cut off the bottom of the barrel to raise graduation rates, but simultaneously take away opportunities, from blacks in particular, to attend college. See SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 103 (quoting Chaney).

183. 776 F. Supp. 1518 (M.D. Ala. 1991).

184. See *id.* at 1531. In this case, the plaintiffs brought a class action suit under Title VI to challenge the Alabama State Board of Education's requirement that college sophomores achieve a 16 on the ACT in order to participate in undergraduate teaching programs. See *id.* at 1519. The plaintiff's complaint included claims of "disparate impact" and "disparate treatment" and sought injunctive relief against further enforcement of the minimum ACT score requirement. *Id.*

185. See *id.* at 1519, 1532.

cutoff score, but not the broader issue of using the ACT as a factor in admission to teacher-training programs.¹⁸⁶

In *Groves*, the committee used policy implications and ignored statistical evidence to set the minimum standards, just as the Proposition 48 groups did.¹⁸⁷ The court in *Groves* invalidated the minimum standard and questioned the state's "homemade methodologies," effectively paralleling many of the problems minimum eligibility standards create.¹⁸⁸ Although neither *Cureton* nor *Groves* eliminated the use of a test as a minimum standard, those courts forced administrators to be more thorough in adopting standards that have broad implications.¹⁸⁹

Standardized test statistics dramatically illustrate the inherent problem of relying on this method to differentiate students.¹⁹⁰ The national college-bound average SAT score for student-athletes is approximately 900.¹⁹¹ Proposition 16 weighs the students' SAT/ACT scores more heavily than their GPAs.¹⁹² Therefore, more than fifteen percent of students taking these tests may be affected by the standardized test cut-off score, while less than three percent will be affected by the GPA minimum.¹⁹³ This emphasis on standardized test scores means that failure to satisfy the minimum requirement may explain a student's ineligibility.¹⁹⁴

186. *Id.* at 1530 (declining to consider the particular cutoff score as "educationally justified" because the ACT may be an inappropriate measure of a teacher's competency).

187. *Id.* at 1520-21; *see also* DEALY, *supra* note 28, at 114. One committee member explains how the committee reached this disturbing decision:

Finally somebody said, well, what can we take to the people? What kind of argument we can make that the people gon [sic] buy? And some soul in there said, well could we make the argument that the teachers ought to be smarter than half the students Everybody will buy it We said, we can sell that So [one of the steering committee members] was commissioned to go to his office and find out what the average ACT was for graduates, came back and said, I believe it's 16.4. So our big decision was whether to go to 17 or 16 Of course, this is also a fallacious argument because the student—the teacher never is as smart as half the students [T]hat was the scientific basis of it gentleman and lady. It was just that scientific.

Groves, 776 F. Supp. at 1521 (alteration in original).

188. *Groves*, 776 F. Supp. at 1532 (implying that the State needs to be more professional in adopting rather important policies).

189. *Id.*; *see generally* *Cureton v. NCAA*, 37 F. Supp. 2d 687 (E.D. Pa. 1999), *rev'd*, 198 F. 3d 107 (3rd Cir. 1999), *on remand to* 2000 U.S. Dist LEXIS 4790 (E.D. Pa. Apr. 13, 2000), *reconsideration denied by* 2000 U.S. LEXIS 6526 (E.D. Pa. May 12, 2000).

190. *See, e.g., Groves*, 776 F. Supp. at 1518; *Cureton*, 37 F. Supp. 2d at 687.

191. *See* McKerrow and Daly, *supra* note 1, at 62.

192. *See* Memorandum, *supra* note 14, at 756a.

193. *See id.*

194. *See* SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 111-14.

Over the past two decades, white student-athletes have attained an average SAT score of approximately 930, while their African-Americans counterparts scored approximately 200 points lower during that same period.¹⁹⁵ This disparity questions the quality of education that black and white communities receive, and suggests that many black students are unaware or unable to afford SAT preparatory classes.¹⁹⁶ There is no general consensus on exactly what causes the divide,¹⁹⁷ which makes the NCAA's decision to use the SAT scores as a standard even more discouraging and confusing. The Educational Testing Service (ETS), the organization that created the SAT, has specifically requested that the NCAA abandon the SAT as a means to establish eligibility standards; however, the NCAA continues to use this controversial standard.¹⁹⁸

D. Examining the Minimum Standard Alternatives

The current standards may exclude students who have the capability of succeeding at and graduating from Division I schools despite low test scores or GPAs.¹⁹⁹ There are problems associated with the current minimum cutoff scores.²⁰⁰ For example, a student with a 2.5 GPA and an 820

195. *See id.* at 111.

196. *See id.* at 111-12.

197. *See id.*; SACK AND STAUROWSKY, *supra* note 9, at 98-99.

198. *See* Gough, *supra* note 173, at 11 (questioning why the NCAA continues to use the SAT to determine eligibility when the experts entertain serious questions).

199. *See* Cureton v. NCAA, 37 F. Supp. 2d 687, 712 & n.33 (E.D. Pa. 1999), *rev'd*, 198 F. 3d 107 (3rd Cir. 1999), *on remand to* 2000 U.S. Dist LEXIS 4790 (E.D. Pa. Apr. 13, 2000), *reconsideration denied by* 2000 U.S. LEXIS 6526 (E.D. Pa. May 12, 2000); *see also* Brief for Appellees, *supra* note 14, at 41; SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 109. Had Proposition 48 been used in 1981, 69% of all black male athletes would not have met its standards; however, 54% of these athletes graduated. *See id.* (citing Richard Lapchick of Northeastern University's Center for the Study of Sport in Society). This statistic indicates that these students possessed the ability to succeed, but just needed help to develop. *See id.* (quoting Richard Lapchick). The NCAA published a 1977 study demonstrating similar results. *See* SPERBER, *supra* note 3, at 220. Gonzaga High School in Washington, D.C. informally studied the transition from Proposition 48 to Proposition 16, which created a higher standard. *See* Asher & DeNunzio, *supra* note 162, at A1. The study discovered that 34 Gonzaga students who received college athletic scholarships would have been ineligible under the new rule, yet 31 out of the 34 students graduated from college and three remained in school. *See id.* Had Proposition 48 or Proposition 16 existed at the time these 34 students received their scholarships, they would not have qualified and would have been branded "Proposition 48 [or 16] casualties." SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 109. To further illustrate the point, University of Georgia Athletic Director, Vince Dooley, said that he "once had a black football player who had a 480 on the SAT and he actually graduated. Today, he's a judge." Brubaker, *supra* note 76, at D1.

200. *See* Brief for Appellees, *supra* note 14, at 40-41 (explaining the arbitrary nature of

SAT score may qualify, but a student with a 3.0 GPA and a 600 SAT score will be ineligible even though both students have the same probability of graduating.²⁰¹ In *Cureton*, the district court found that the plaintiffs showed that “at least three alternative practices [existed] resulting in less racial disproportionality while still serving the NCAA’s goal of raising student-athlete graduation rates”²⁰² The NCAA and the *Cureton* court also examined three alternatives to Proposition 16.²⁰³

Under the first alternative, partial qualifiers would be considered full qualifiers by lowering the SAT minimum score to 720 (or 59 on the ACT) and extending the sliding-scale to a 2.750 GPA.²⁰⁴ Despite this adjustment, the lowest standardized test score would remain higher, in relation to the national norm, than the minimum required high school grades.²⁰⁵ What the court does not mention is that this model would only have affected 412 students, or one percent of the total number of student-athletes registered under the NCAA Initial-Eligibility Clearinghouse, had this rule been in effect in 1997 instead of Proposition 16.²⁰⁶ Because African-Americans composed the majority of those potentially affected, this rule is expected to produce a small increase in the proportion of African-Americans meeting the eligibility standards.²⁰⁷

The second alternative, known as Model 3, would also make partial qualifiers full qualifiers.²⁰⁸ Model 3 would also lower the minimum SAT score to 600, provided that the student obtained a 3.050 GPA in accordance with the sliding scale.²⁰⁹ This system would eliminate complaints that the SAT is weighed too heavily because a score of 600 is two deviations below the national average, as is a 2.000 GPA.²¹⁰ In 1997, this scenario would have only affected thirty students (or 0.1%) of all the Division I hopefuls who had SAT scores between 600 and 710 coupled with a

the cutoff scores and how they affect similarly situated students).

201. See *id.*; see also DICK VITALE’S SLAM BAM JAM (ESPN television broadcast, Nov. 9, 1999) [hereinafter SLAM BAM JAM] (arguing that the NCAA must eliminate the distinction between a nonqualifier and a partial qualifier).

202. *Cureton*, 37 F. Supp. at 714 (indicating that the plaintiffs satisfied their burden under Title VI).

203. *Id.*; see generally Memorandum, *supra* note 14.

204. See *Cureton*, 37 F. Supp. at 713; see generally Memorandum, *supra* note 14.

205. See *Cureton*, 37 F. Supp. at 713; see generally Memorandum, *supra* note 14.

206. See Memorandum, *supra* note 14, at 758a.

207. See *id.*

208. See *Cureton*, 37 F. Supp. 2d at 713.

209. See *id.*

210. See Memorandum, *supra* note 14, at 760a; see also *Cureton*, 37 F. Supp. at 713.

GPA score high enough to make them full qualifiers.²¹¹

The final alternative eliminates the minimum GPA and SAT scores and shifts strictly to a "test-grades combination."²¹² In 1997, only twenty-three student-athletes (or 0.1%) had a GPA below 2.000 and an SAT or ACT score high enough to meet the sliding scale standard.²¹³ This model, the NCAA's least preferred alternative, projects the highest student-athlete graduation rate of any of the choices at 59.8%.²¹⁴

III. THE NCAA'S SELF-SERVING PRACTICES MUST COME TO AN END

The NCAA does what is best for the NCAA, but this strategy is failing.²¹⁵ The NCAA regularly professes its desire for academic values, yet fails to enact rules that promote these values because such rules may infringe upon gate receipts or disregard college sports as public and commercial endeavors.²¹⁶ Some of the NCAA's recent decisions defy common sense by strictly adhering to such nonsensical rules.²¹⁷ The NCAA

211. See Memorandum, *supra* note 14, at 760a.

212. *Id.* at 761a; see also *Cureton*, 37 F. Supp. at 713-14.

213. See Memorandum, *supra* note 14, at 760a.

214. See *Cureton*, 37 F. Supp. 2d at 714 (stating that this alternative yields the highest student-athlete graduation rate). The student-athlete graduation rate in 1985, the year before Proposition 48 was enacted, was 52%. See *id.*

215. See Barbash, *supra* note 166, at 75. One argument proposes that the NCAA's downfall may be attributed to its minimum authority to "deal with inherently contradictory goals." HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 83. By encouraging collegiate sports, the NCAA attempts to support academic values; unfortunately, it simultaneously promotes the commercialization of collegiate sports. See *id.* As a result, the NCAA has allowed a system that is antithetical to amateurism to persist. See *id.* at 99. Despite sanctions imposed by the NCAA, schools routinely violate NCAA rules and do not reform their illegal practices. See *id.*

216. See LAWRENCE, *supra* note 23, at 121-22 (describing the NCAA as a "cartel" that restricts production and raises prices). As a classic cartel, the NCAA affects the amount of athlete compensation, which "falls well below what a skilled athlete could command in a free market," and limits the amount of games a school can play in an attempt to reap the surplus input and output benefits. *Id.* at 122; see also SACK AND STAUROWSKY, *supra* note 9, at 79 (explaining that since its founding the NCAA has not enforced any legislation to limit gate receipts or retard the corporate mentality surrounding college athletics).

217. See, e.g., WEISSBERG, *supra* note 3, at 31. The NCAA's strict adherence to these rules is best illustrated by the experience of Tracy Graham, a member of Iowa State University's women's volleyball team. See *id.* at 30. Although Graham easily satisfied the minimum ACT score of 17 and had a B+ high-school average, the NCAA ruled Graham ineligible, because she unknowingly took the ACT on a day that the NCAA did not sanction. See *id.* Graham had competed in a high school track meet on the approved date, but the NCAA still deemed her ineligible on this technicality. See *id.* Graham and Iowa State appealed to four different NCAA committees; she was finally granted eligibility, but after missing an entire volleyball season. See *id.* at 31.

enacted initial eligibility regulations under the veil of academic integrity, but mainly to correct its own problems caused by academic scandal and diminishing credibility.²¹⁸ Despite damaging evidence to the contrary, the NCAA denies that Proposition 16 disparately impacts certain students and continues to insist that its own alternatives are suitable to bringing about the desired change.²¹⁹ The NCAA is at the heart of this problem and is responsible for creating this damaging commercial mentality.²²⁰

A change is needed in the world of college athletics.²²¹ Current genera-

218. See Greene, *supra* note 155, at 109-10 (stating that scandals and problems forced the NCAA to address these "more pressing objective[s]"). According to one author, Proposition 48 "marked a step toward a *fundamental* transformation or reassertion of the NCAA's authority." HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 93. Seen in this manner, a strong case is made for the NCAA to refrain from making decisions in response to market attitudes as in the case of Proposition 48. See *id.* Since the NCAA implemented Proposition 48, the allocation of scholarships to African-American freshmen has dropped from 27.6% to 23.2%. See SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 104. These decreases occurred in the face of NCAA predictions of a statistical upturn that has not yet materialized. See Shropshire, *Colorblind Propositions*, *supra* note 23, at 142. The NCAA's data show, by its own admission, that Proposition 16 disproportionately affects African-Americans. See Memorandum, *supra* note 14, at 756a (admitting that the disparate impact is seen mainly among African-American student-athletes, but also affects other ethnic-minorities). The student, prior to qualifying under Proposition 16, must register with an NCAA Initial-Eligibility Clearinghouse to verify his grades and scores. See NCAA MANUAL, *supra* note 42, art. 14.3.1. For a full discussion regarding the NCAA Eligibility Clearinghouse, see generally Reding & Meier, *supra* note 133.

219. See Brief for Appellant, *supra* note 163, at 42.

220. See HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 99 (blaming the NCAA for creating the commercial system "by helping [universities] to amass financial resources and to distribute such resources" to NCAA colleges and universities).

221. See, e.g., Ken Denlinger, *Addressing 'Hypocrisy' in College Sports*, WASH. POST, Oct. 22, 1999, at D7. The NCAA's cartel characteristics show "it is clear that an organization once dominated by altruistically motivated people concerned only with the 'good of the game' is now functioning like most other businesses, concentrating on product demand, competition, and employees' wages." LAWRENCE, *supra* note 23, at xv. The NCAA's analysts even have recommended to the NCAA that it eliminate cutoff scores. See Brief for Appellees, *supra* note 14, at 42. In 1991 and 1994, an NCAA Academic Requirements Committee recommended a rule without a minimum cutoff. See *id.* at 42-43. Other NCAA research staff members have also allegedly recommended elimination of the cutoff standard because:

[N]o predictor . . . should be used as a single cutoff for eligibility in college. We show that a test score or grades used as single cut-points (as in the current rule) are less accurate, and do more damage than the two used in a linear combination. This is especially true of Blacks who are subjected to a single cut on the test score; they are excluded at a rate that is far higher than Whites, and their potential for success is higher than Whites at the same level. Thus, under that type of rule we are excluding an inordinate number of Blacks who would actually succeed in college.

Id. at 43.

tions of student-athletes often receive empty promises.²²² Part of the blame for the problems associated with college athletics must fall on the coaches.²²³ The athlete watches his coach make millions of dollars in salary and endorsements-much more than many professional athletes.²²⁴ The athlete must question what the NCAA does with the millions it receives each year from television contracts.²²⁵ If a coach asks a student-athlete to work on his jump shot or lift weights, a student-athlete will un-

222. See GOLENBOCK, *supra* note 38, at 5 (saying that schools have told students they will eventually have professional careers in order to secure the students' enrollment). Authors have described this game as "corporate athleticism," which describes the influence of business on college sports and reinforces the idea of college sports as big business. HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 1. Being number one, securing large gate revenue and numerous television appearances, hiring the right coaches, and recruiting the star "blue chip" athlete to produce that revenue lie at the heart of this concept. *Id.* Corporate athleticism describes the process through which colleges generate revenue and emphasizes the meaning of each step in the process. See *id.* at 7 ("[The school] expends great effort (investment) to recruit, train, and develop top athletes (workers) and to find and reward 'winning' coaches (management). Winning football or basketball (the product) will then generate, if all goes well, substantial gate receipts and numerous television contracts (profit).").

223. See Alexander Wolff & Dean Smith, *Dean Smith Unplugged*, SPORTS ILLUSTRATED, Dec. 22, 1997, at 50; see also SACK AND STAUROWSKY, *supra* note 9, at 100. The case of Gary Colson, New Mexico University's basketball coach from 1987 to 1988, exemplifies the pressure to win that coaches feel. See WOLFF & KETEYAN, *supra* note 180, at 123-25. Colson's squad fell short of an NCAA tournament bid, but received an invitation to the National Invitation Tournament (NIT). See *id.* at 124-25. Colson's bosses regarded the NIT as a consolation prize. See *id.* at 125. They fired him for his inability to take the team to "the next level" despite the fact that his players graduated, involved themselves in the community, and did not violate NCAA rules. *Id.* Colson simply did not win enough; it cost him his job. See *id.*

224. See, e.g., WOLFF & KETEYAN, *supra* note 180, at 130. Basketball coaches can earn tremendous amounts of money from shoe endorsements (e.g., Nike, Converse, and Reebok), TV and radio shows, speaking engagements and motivational lectures, which can bring \$5,000 to \$10,000 each, and renting out the school's gymnasium for basketball camps. See *id.*

225. See Mark Asher, *NCAA Ponders Paying Athletes: TV-Rights Money Spurs Discussion*, WASH. POST, Nov. 20, 1999, at D1; see also *supra* note 126 and accompanying text (describing television broadcast contracts). In 1999 the NCAA made approximately \$283 million, with \$226 million from television revenue and the remaining amount from ticket sales, licensing, royalty fees, and investments. See Asher, *supra*, at D1. That total amount breaks down as follows: \$140,650,000 distributed to Division I conferences and schools; \$54,911,000 for division-specific expenses, including the operation of Division I championships and annual allocations to Division II and III schools; \$33,659,000 for member institution programs and services, including marketing, licensing and promotion, and rule enforcement; \$18,268,000 for operation of the national office; \$3,750,000 for governance and committees; \$17,300,000 to settle litigation involving restricted earnings for coaches; \$14,452,000 for student-athlete welfare, including youth programs, drug testing and research, and the NCAA Initial-Eligibility Clearinghouse. See *id.*

doubtedly fulfill his coach's wishes despite compromising his or her own studies.²²⁶

Additionally, the college's athletic treasury pockets millions of dollars at the student-athlete's expense.²²⁷ It appears uncontroverted that "[y]oung athletes should not be admitted to a college where, even with remediation, they are likely to fail; it is a scandal and disgrace that illiterate athletes have been admitted to college."²²⁸ In far too many cases, and in spite of the NCAA minimum eligibility rules, the college athlete finishes with "[n]o education, no degree, no skills, no money, [and] no career."²²⁹ Fortunately, in addition to the weak changes that the NCAA proposed in *Cureton*, numerous possibilities exist which place a much stronger emphasis on academics and amateurism.²³⁰ Most of these alternatives would require major changes, but given the many NCAA shortcomings, these opportunities could only strengthen the respect and authority of this troubled institution.²³¹

A. Earning Valuable Skills and the Elusive Degree

One possibility would include a complete elimination of all testing and minimum eligibility standards and allow the schools to set their own standards.²³² At many schools, the difference between the average SAT

226. See SACK & STAUROWSKY, *supra* note 9, at 100 (reporting results of a study comparing students' educational and athletic experiences at all three NCAA divisions).

227. See GOLENBOCK, *supra* note 38, at 5.

228. Clark, *supra*, note 161, at 274.

229. GOLENBACK, *supra* note 38, at 5.

230. See *infra* notes 265-280 and accompanying text (discussing different possibilities).

231. See generally Andrew Zimbalist, *College Sports Crisis: Is It Time for a Serious Overhaul?*, WASH. TIMES, Oct. 1, 1999, at A19. The NCAA may finally realize that it must change its business style. See *id.* Recently, the NCAA hired a law firm to review its bylaws and to determine if antitrust problems may arise and established a commission to suggest changes within the current basketball system to "make it more congruent with the Association's proclaimed academic mission." *Id.* The commission considered freshman ineligibility as a possible solution, but did not recommend it. See *id.* The commission proposed, for the first time, to provide students who do not meet the minimum SAT or GPA standards with the opportunity to receive a full athletic scholarship. See *id.* The commission also recommended linking graduation rates over a school's previous four years to the amount of scholarships a school can receive. See *id.*

232. See SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 120-21 (describing examples of schools that dropped standardized testing requirements and saw no negative impact on the university or the student). Head basketball coach John Calipari of the University of Massachusetts suggests that schools admit athletes who have scored no less than 250 points below the school's median SAT score. See JOHN CALIPARI, REFUSE TO LOSE 184 (1996). A school with an average SAT score of 1000 can admit a student with an SAT no lower than 750. See *id.* at 184-85. Although Calipari believes that university presidents

score and an athlete's SAT score exceeds 300 points.²³³ Why should a student with an 820 SAT score, despite passing Proposition 16 requirements, usurp another student's chance to enter a top university when the other student's hard work has earned him a 1360 SAT score and a 3.5 GPA?²³⁴ The answer is because college programs need to be athletically competitive and have accomplished this by using the "special admit" loophole in the admissions department.²³⁵ Most schools frequently use "special admits" and admit a small percentage of applicants whose qualifications fall below the norm, but possess other exemplary skills that the university values.²³⁶ Athletic departments often negotiate with admissions departments, allowing them to gain admittance of many athletes whose standards are far below the school minimum.²³⁷ Schools and coaches concoct borderline, yet legal ploys to persuade prospective recruits to attend their university, which the NCAA cannot sanction.²³⁸

will never adopt this policy, he proposes that such a policy would allow prospective student-athletes to survive in an environment suited for their academic capabilities. *See id.* at 185.

233. *See* Denlinger, *supra* note 221, at D7.

234. *See* DEALY, *supra* note 28, at 123. In a letter to the editors of *Sports Illustrated*, Collie F. James III of Plano, Texas said:

"My son—1360 on the SAT's, 3.5 grade point average, National Merit scholarship semifinalist, starting quarterback on the football team, starting pitcher on the baseball team—is one of 12,000 students who have applied for a spot in next fall's freshman class at Georgetown. Some 10,000 of those applicants, most of whom have impressive credentials, will be turned down. It is ludicrous to believe that a student with a 2.0 GPA and a 700 total score on the SAT's should be allowed to occupy a seat in the classroom when so many young people who have put great effort into their studies are told to go elsewhere."

Id.

235. SPERBER, *supra* note 3, at 219. Some experts estimate that colleges enroll 80%-90% of men's basketball and football players based on "special admits." Zimbalist, *supra* note 231, at A19. Despite this loophole, lowering admission standards in order to admit talented athletes began well before "the advent of athletic scholarships." SACK & STAUROWSKY, *supra* note 9, at 96.

236. SPERBER, *supra* note 3, at 219.

237. *See id.*; CALIPARI, *supra* note 232, at 183. Calipari candidly describes his interaction with the admissions' staff as he used to confer with the admissions officers and review each recruit on a case-by-case basis. *See id.* The coach appears proud of the fact that he only admitted four players who did not meet the minimal academic standards during his eight years. *See id.*

238. *See, e.g.,* WOLFF & KETEYIAN, *supra* note 180, at 133. One example of a legal but very suspect practice is when coaches hire a potential recruit's high school coach in a "package deal." *Id.* at 133, 134. The University of Kansas unsuccessfully recruited high school star Danny Manning, who seemed destined for the University of North Carolina, until Kansas's coach Larry Brown hired Danny's father Ed (a truck driver) as an assistant coach. *See id.* at 134. The family moved to Lawrence, Kansas and Danny eventually led Kansas to the 1988 National Championship. *See id.*

Challenging universities to raise their standards through self-regulation is an option, but the pressure that coaches, boosters, and universities face does not make this seem feasible.²³⁹

One expert suggested testing, not upon entering college, but at the conclusion of a four-year education by using the Graduate Record Examination (GRE).²⁴⁰ Experts say the GRE is less culturally biased than the SAT and provides a more balanced gauge because it tests general concepts which should be familiar to everyone completing course requirements at a four-year institution.²⁴¹ If a student fails to achieve the minimum GRE cutoff score, the school could lose an athletic scholarship from its designated total instead of individually penalizing the student being penalized under Proposition 16.²⁴² If a player left school during the term of his four-year scholarship, the school would be penalized by not being allowed to fill that student's scholarship until the player's entire four-year eligibility period runs out.²⁴³ This may revive the student component of the student-athlete by forcing students to study and requiring coaches to consider the player's, as well as their own, best interests. Unfortunately, this plan will cause coaches to shy away from players with weak academic records for fear that they will never be able to compete academically in college, thus never providing a chance to someone who may be able to succeed. On the other hand, others argue that students who are unable to compete academically in that school's environment should not be there in the first place.²⁴⁴

Another possible solution allows student-athletes unable to obtain the minimum SAT scores access to postgraduate preparatory schools.²⁴⁵ This

239. See HART-NABBRIG & COTTINGHAM, *supra* note 3, at 112 ("One thing is certain: athletic directors, coaches, and boosters will not sit still and watch a group of CEO's try to legitimize academic standards by ruining the athletic goose laying golden eggs.").

240. See SPERBER, *supra* note 3, at 226.

241. See *id.* at 226-227 (stating that students without knowledge of most of the skills tested in the GRE probably would not be able to pass most regular university classes during a four-year period).

242. See *id.* at 227.

243. See *id.*

244. See, e.g., Clark, *supra* note 161, at 274 & n.41.

245. See Taylor, *supra* note 181, at 149. The postgraduate school should not be confused with junior colleges. See generally Alexander Wolff, *The Juco Express*, SPORTS ILLUSTRATED, Nov. 18, 1987, at 6. Since Proposition 16's strict standards do not apply to junior colleges, a junior college student may play right away. See *id.* at 13. After two years in junior college, a student-athlete still has two years of eligibility, but only needs to meet minimal NCAA standards and the school's admission standards to maintain eligibility. See Andrew Bagnato, *The Buck Stops Nowhere: Eligibility Rules Abrogated as NCAA, Junior Colleges Feud*, CHI. TRIB., Aug. 6, 1995, at C1. Coaches quickly realized that jun-

option provides students the chance to play basketball and take classes designed to increase their SAT scores.²⁴⁶ The greatest attribute that prep schools offer to recruiters and students, unlike junior college or Proposition 16, is that the students do not lose a year of eligibility.²⁴⁷ Prep schools also help troubled students develop study habits and skills that will help them in college and beyond.²⁴⁸

Perhaps the most sensible and most radical alternative possibility reverts back to 1972 and eliminates freshman eligibility altogether.²⁴⁹ Until 1972, freshman athletes had almost "20 seasons without the right to play on the varsity" squad.²⁵⁰ This ban allowed the student-athlete to be a student "first and foremost."²⁵¹ The university can guide the overwhelmed freshman student-athlete and simultaneously make a statement that academics come first.²⁵² It is undisputed that all freshman, whether or not they play sports, must make tremendous adjustments to living away from home in a new social setting while entering into a more rigorous academic environment.²⁵³ A freshman athlete who is only permitted to practice during his first year, or one who wants to play professionally after one or two seasons, may lose his patience.²⁵⁴ The elimination of freshman eligibility may replace these students with student-athletes who value academics and athletics equally.²⁵⁵ Another option suggests that

ior colleges could store prospects, allow them to mature for two years, and then allow them to contribute immediately. *See id.* This trend continued until three NCAA schools committed academic fraud concerning the recruitment of junior college athletes. *See id.*

246. *See* Taylor, *supra* note 181, at 150. In recent years, former Florida State University guard and current National Basketball Player (NBA) player Sam Cassell, and former Syracuse University guard and top freshman in the Big East conference Lawrence Moten took advantage of postgraduate schools and succeeded in college. *See id.*

247. *See id.* at 149-50. A well-known prep school success includes Johnny Rhodes, who spent one year at Maine Central Institute to raise his SAT score, and then attended the University of Maryland for four productive seasons. *See id.*

248. *See id.* at 151.

249. *See* Wolff & Smith, *supra* note 223, at 52.

250. Alan Schmadtke, *A Kid's Game*, THE SPORTING NEWS, Nov. 30, 1992, at S-7.

251. SHROPSHIRE, IN BLACK AND WHITE, *supra* note 24, at 119. Shropshire believes that the Ivy League took a big step backward when it reinstated freshman eligibility during the 1990s. *See id.* at 119-20.

252. *See generally id.* at 119. Many question how a freshman can come to the university, "get his or her intellectual and social bearings, develop good study habits and devote 30 to 60 hours a week to a sport." Zimbalist, *supra* note 231, at A19.

253. *See* Wolff & Smith, *supra* note 223, at 52.

254. *See id.* Cedric Dempsey, the NCAA's executive director, stated that "[a] lot of kids are coming to school now just to get exposure for a year or two, with no interest in moving through the academic program. That's a real concern for me, and that's where I think freshman ineligibility would be helpful." Zimbalist, *supra* note 231, at A19.

255. *See* Wolff & Smith, *supra* note 223, at 52.

schools award freshman financial aid and only allow them to practice, which will preserve their four years of eligibility.²⁵⁶

B. Erosion of the Dividing Line Between College and Professional Athletics

One perplexing problem lies in the fact that, unlike baseball, basketball and football do not have minor league systems.²⁵⁷ Moreover, the recent trend in basketball shows star players staying for one or two years of college instead of the entire four years.²⁵⁸ The best college basketball athletes have few incentives to earn a degree because such athletes secure lofty professional contracts.²⁵⁹ On the other hand, colleges have little reason to offer valuable scholarship spots if Proposition 16 may disqualify the recipients and if the athletes will stay for only one or two years.²⁶⁰ The issue is whether there exists an alternative which allows the NCAA to protect academics, student-athletes, and athletics simultaneously.

The NBA is considering a developmental league for college-age basketball players that some feel will cause even more players to leave college early or forgo college altogether.²⁶¹ The NBA appears concerned with the fact that those who do not complete college are unprepared for the professional world "on and off the court."²⁶² The NBA is trying to avoid a league "dominated by millionaire man-children with poor fun-

256. See Schmadtke, *supra* note 250, at S-7. This idea differs none from the concept of redshirting, which is perfectly legal under the NCAA's rule and typically occurs during an athlete's freshman year. See HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 5. A red-shirt student may not play organized sports during his freshman year, but has five years to complete college, which extends his athletic career. See *id.* Many universities across the country use this practice: an NBC poll found that 95% of all Division I schools redshirt students. See *id.* At the University of Nebraska, 81% of all first year football players are redshirted, which, according to the school, gives the students a better chance to graduate. See *id.* Regardless of the motivation to redshirt, "this practice stabilizes the dominant position of those teams at the very top of the football and basketball hierarchy." *Id.*

257. See Pentimone, *supra* note 13, at 490 ("[T]he road to the . . . National Basketball Association is through the NCAA."). But see *infra* notes 267-70 and accompanying text (describing numerous attempts to establish a minor league basketball league).

258. See Michael Bradley, *The Young and Restless*, THE SPORTING NEWS, Jan. 13, 1997, at 33.

259. See generally Pentimone, *supra* note 13, at 490. For example, Anfernee "Penny" Hardaway, affected by Proposition 48 and number two pick in the 1993 NBA draft, signed a \$70 million contract in 1995. See Smith, *supra* note 2, at 1.

260. See generally Athelia Knight, *NBA Ponders New League*, WASH. POST, Mar. 23, 2000, at D1.

261. See *id.*

262. *Id.*

damentals on the court and stunted maturity levels off it."²⁶³ The Continental Basketball Association (CBA) may also reform itself to run like a minor league basketball system.²⁶⁴

Perhaps the most novel idea is the eight-team Collegiate Professional Basketball League, which hopes to start playing in Fall 2000.²⁶⁵ This league will pay athletes a small salary and tuition for part-time schooling in the city in which they play or for use within four years after mandatory retirement (age 22).²⁶⁶ The new league is intriguing because it recognizes aspiring athletes' desires to play sports, yet emphasizes the importance of education. This concept reduces the rampant exploitation in collegiate athletics and the hypocrisy of student-athletes in the NCAA.²⁶⁷

Because amateurism in college athletics has almost disappeared, some suggest taking the next step toward transforming college athletics into a semi-professional organization.²⁶⁸ A semi-professional system presup-

263. Bradley, *supra* note 258, at 33; see Knight, *supra* note 260, at D1. The most recent horror story involves Leon Smith, the Dallas Maverick's first-round draft pick in 1999. *See id.* Smith signed a three-year, \$1.5 million contract straight out of high school. *See id.* He refused the Maverick's request to begin playing in a developmental league or in Europe. *See id.* Soon thereafter, Smith attempted suicide and was arrested twice, all within a 24-hour period. *See id.*

264. *See* Kevin Blackistone, *CBA Will Prosper Further as NBA's Minor League*, THE TIMES-PICAYUNE, Aug. 8, 1999, at C-3. NBA teams would affiliate themselves with a current CBA team and have the ability to call up and send down young athletes who are unprepared for the rigors of the NBA. *See id.* Supporters hope that receiving minor league wages and the idea of being "just another guy in Grand Rapids rather than [the] Big Man On Campus" will scare kids back into colleges. *Id.* "As it is now . . . kids taken in the [NBA] draft's first round are all but guaranteed roster spots and multi-year, multi-million dollar contracts." *Id.*

265. *See* David Whitford, *Selling is Still 99% Sweat*, FORTUNE, Sept. 27, 1999, at 285. Paul McMann, a former college professor from Babson College founded this league. *See id.*

266. *See id.* The league plans to recruit high school seniors and offer them a \$5,000 signing bonus, a \$9,000 stipend, and money for rent, tuition, room, and board. *See id.* The league requires "daily workouts" and "personal appearances" which probably only allow time for the athletes to attend college part-time. *Id.* Athletes attending school full-time qualify for a \$3,000 per year bonus, and a \$10,000 bonus for graduating within four years. *See id.* The league intends to rely on corporate sponsors and adopt the sponsor's names as the team names. *See id.* The Boston team will be Team Lycos, Chicago will have Team Acunet (an Internet Service Provider), and Detroit will have Team Broadcast.com. *See id.* Philadelphia, Washington, Cleveland and New York teams are still seeking sponsors for about half a million dollars per year per team. *See id.* Nike and Adidas will supply shoes and the PAX network will broadcast games. *See id.*

267. *See generally id.* McMann implemented this idea because of the "widespread disgust with the state of big time college sports." *Id.*

268. *See, e.g.,* Clark, *supra* note 161, at 275; *see also* HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 108 (describing college athletics as void of all elements of amateurism).

poses a more formal split between academics and athletics.²⁶⁹ This system would compensate the athlete through a minimal salary and endorsements and recruit them solely on athletic talent.²⁷⁰ Experts supporting this proposal lament that the current system is hopelessly ineffective for scholarship athletes, especially African-Americans.²⁷¹ Unfortunately, recommending ideas to strengthen the import of academics by colleges and universities will further distance the student and the athlete.²⁷²

Because student-athletes practice many hours per week and do not have time to work, a more realistic compromise may include increased financial aid or cash payments to provide for their living expenses.²⁷³ The NCAA is currently considering that possibility by "adding \$2,000 in cash to athletic scholarships."²⁷⁴ Given the sheer amount of students participating in NCAA athletics, this is not an easy issue to resolve.²⁷⁵ The NCAA is also considering a change that would allow athletes who have earned prize money, have been selected into professional leagues, or have played under professional contracts, to earn scholarships and return to college.²⁷⁶

Proponents of semiprofessionalism or the NCAA's new proposals believe that the "classic definition of amateurism has outlived its usefulness . . . [and] the association's rules contain contradictions that violate the

Despite the demise of amateurism, many feel that the public still believes and views college "games [as] unadulterated by raw commercial value." *Id.*

269. See HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 108. The separation of the sports department from the academic university would reduce the college team to a symbolic link of the academic institution, but would allow recruiting based solely on athletic talent. See *id.* If this proposal were ever considered legitimately, there is a strong likelihood that legislatures, alumni, boosters, local businesses, students, and the public would offer little support. See *id.*

270. See Clark, *supra* note 161, at 275; HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 108.

271. See Clark, *supra* note 161, at 276 & n.47 (pointing to the extremely low graduation rates of student-athletes, particularly African-American student-athletes, and the fact that the majority never make it to the professional ranks).

272. See HART-NIBBRIG & COTTINGHAM, *supra* note 3, at 108.

273. See SPERBER, *supra* note 3, at 267; see also Clark, *supra* note 161, at 277 & n.49 (recognizing the difficulty in sustaining two full-time jobs as both a student and an athlete).

274. Mark Asher, *NCAA Ponders Paying Athletes*, WASH. POST, Nov. 20, 1999, at D1.

275. See *id.* (stating that at Division I schools, 40,000 men and women receive full scholarships, many more receive partial scholarships and about 335,000 men and women participate in all levels of NCAA athletic competition).

276. See Welch Suggs, *The Demise of the 'Amateur' Ideal*, CHRON. OF HIGHER EDUC., Oct. 29, 1999, at A75.

amateur ethic anyway.”²⁷⁷ Regardless of the direction the NCAA ultimately chooses, it will only eradicate the corruption and hypocrisy currently associated with college athletics upon realization that its current system’s athletics and academics are incompatible with one another.²⁷⁸ If the student-athlete only wants to be in college to play basketball or football, then he should not be in college in the first place.²⁷⁹ When potential student-athletes want to attend college but cannot because they are forced to jump straight to the NBA or because scholarships are tied up with students who only want to play sports and have no interest in studying, a significant problem exists.²⁸⁰

IV. CONCLUSION

Although Proposition 16 and its predecessors have dramatically affected college athletics, statistics show that this effect is mainly at the expense of minority and low-income students. The NCAA and the *Cureton* court proposed alternatives to Proposition 16 which only tweak the existing policy rather than force full-scale change. The problem is that the market dictates what must happen and the current market is extremely commercial. As a result, coaches and schools selfishly sacrifice an academically exceptional student for someone who will give the program an immediate boost athletically. Only a deep-rooted, honest desire to change the state of affairs in college sports will succeed. Unfortunately, almost every proposed solution to the commercialization of college sports or eligibility standards has allowed coaches, players, and administrators to find a loophole or a way around any rule. An overall change in the mentality of the college sports world is necessary.

As a starting point, freshman ineligibility appears to cure much of what ails college sports today, and makes the student-athlete a student first. Coupling an additional year of eligibility with freshman ineligibility is the perfect compromise. This solution renders the need for minimum test scores obsolete because a student who cannot satisfy the school’s academic requirements during his freshman year provides a far better pre-

277. *Id.*

278. See SPERBER, *supra* note 3, at 348 (stating that the NCAA should stop “pretending” that college sports are “connected to their educational missions”).

279. See SLAM BAM JAM, *supra* note 201.

280. See Knight, *supra* note 260, at D8 (quoting University of Delaware’s basketball coach Mike Brey); Bradley, *supra* note 258, at 34. According to former Toronto Raptors General Manager Isiah Thomas, “Kevin [Garnett] would be the first to tell you that he wanted to go to college Proposition 48 worked against the NCAA in that case.” *Id.* Garnett went straight to the NBA after graduating from high school. See *id.*

dictor of success than the SAT. This proposal also allows schools to set their own minimum standards to recruit and simultaneously eliminates NCAA enforcement and its problematic standards. Finally, it eliminates the reality that college athletics is a one or two year minor league program for basketball and football players. This proposal has the potential to change the dynamics of college sports for the better.

